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Judge McGovern

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OCT 16 1986

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

THE UNITED STATES OF AMERICA and
THE STATE OF WASHINGTON,

Plaintiffs,

and

STANDARD EQUIPMENT, INC.,

Plaintiff in
Intervention,

v.

WESTERN PROCESSING COMPANY, INC.;
GARMT J. NIEUWENHUIS;
THE BOEING COMPANY; et al.,

Defendants.

NO. C83-252M

CONSENT DECREE

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CONSENT DECREE

AGREEMENT OF PARTIES

The parties agree that:

A. The United States of America ("United States"), on behalf of the Administrator of the Environmental Protection Agency ("EPA"), filed a Complaint in this case on February 25, 1983, under Sections 3004, 3008 and 3013 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6924, 6928 and 6934 and Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, alleging that the Western Processing Company, Inc. ("Western Processing"), Garnt J. Nieuwenhuis and Luurt G. Nieuwenhuis violated the RCRA Interim Status Standards, failed to comply with two administrative orders issued by EPA and illegally discharged pollutants to a navigable water;

B. The United States filed a First Amended and Supplemental Complaint on June 30, 1983, under Sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9604, 9606, and 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, alleging, inter alia, that the release of hazardous substances at the Western Processing Site presents an imminent and substantial endangerment to the public health or welfare or the environment;

C. The United States and the State of Washington entered into a Partial Consent Decree providing only for the surface

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1 cleanup of the Western Processing Site with the parties listed on
2 Attachment A to the Partial Consent Decree, which Partial Consent
3 Decree was lodged with this Court on July 20, 1984, and entered
4 by this Court on August 28, 1984;

5 D. On July 26, 1984, the United States and the State of
6 Washington as an additional plaintiff filed a Second Amended and
7 Supplemental Complaint naming as additional defendants the
8 companies which signed the Partial Consent Decree, alleging that,
9 as responsible parties under Section 107 of CERCLA, 42 U.S.C.
10 § 9607, defendants are liable for the abatement of the
11 endangerment which is present at the Western Processing Site and
12 for all costs expended by the United States and the State of
13 Washington to study and to abate the endangerment at the Western
14 Processing Site and to enforce the provisions of CERCLA and RCRA;

15 E. Additional companies were added as signatories to the
16 Partial Consent Decree and joined as defendants to the Second
17 Amended and Supplemental Complaint by Order of this Court dated
18 October 11, 1984;

19 F. The relief sought against the defendants in the Second
20 Amended and Supplemental Complaint would require them to
21 reimburse the United States and the State of Washington and to
22 conduct a cleanup of the Western Processing Site beyond that
23 provided for in the Partial Consent Decree, and compliance with
24 this Consent Decree accomplishes those objectives;

25
26

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1 G. Plaintiffs and the Consenting Defendants recognize that
2 the public interest is best served by the entry of this Consent
3 Decree and that this settlement avoids lengthy and difficult
4 litigation; and

5 H. Plaintiffs and the Consenting Defendants, by their
6 representatives, have agreed to this Consent Decree;

7 NOW, THEREFORE, it is ORDERED as follows:

8
9 II

10 JURISDICTION

11 This Court has subject matter jurisdiction over this matter
12 and personal jurisdiction over the signatories consenting
13 hereto. Each signatory submits itself to the jurisdiction of the
14 Court for all matters relating to this Consent Decree.

15
16 III

17 DEFINITIONS

18 The following definitions shall apply in this Consent Decree:

19 A. "Consenting Defendants"--the parties listed in
20 Appendix A hereto;

21 B. "Contaminants"--hazardous substances, pollutants, or
22 contaminants as defined in CERCLA; dangerous waste, extremely
23 hazardous waste and hazardous substances as defined by Chapters
24
25
26

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1 70.105 and 70.105A, Revised Code of Washington ("RCW")^{1/}; and
2 any oil and petroleum not covered above but included in Chapter
3 90.48 RCW;

4 C. "Covered Matters"--see subparagraph XIX.B. below;

5 D. "EPA"--the United States Environmental Protection
6 Agency;

7 E. "Governments"--the United States of America and the
8 State of Washington, acting alone or together;

9 F. "Groundwater"--water in a saturated zone or stratum
10 beneath the surface of land or water. Shallow groundwater is
11 that groundwater which is beneath the Site, is east of Mill
12 Creek, and is intercepted by Mill Creek or the East Drain (See
13 Figure 1 of the Scope of Work). Regional groundwater is that
14 groundwater which is or has been beneath the Site and which is
15 not or has not been intercepted by Mill Creek or the East Drain;

16 G. "Scope of Work"--Appendix B to this Consent Decree;

17 H. "Site"--the real property consisting of approximately
18 thirteen (13) acres located approximately ten (10) miles south of
19 _____

20 ^{1/} The definition of dangerous waste shall be pursuant to
21 WAC 173-303-070(2)(a) (List Designation), except that the
22 Governments may request that specific samples of the
23 containerized wastes (not to exceed ten percent of such
24 samples) shall be tested for designation under
25 WAC 173-303-070(2)(b) (Criteria Designation). However, the
26 Governments shall not consider the results of such testing if
the Consenting Defendants can demonstrate to the Governments'
satisfaction that the results of bioassay testing methods
[WAC 173-303-101(3)(c)] are not valid. For example, the
Consenting Defendants may demonstrate that gill abrasion from
the waste is a more likely cause of fish death than the
toxicity of the waste.

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1 Seattle, Washington, near State Highway 181 and within the City
2 of Kent, Washington, at which Western Processing did business.
3 The legal description of the property is approximately as
4 follows: that portion of the southeast quarter of the northwest
5 quarter of Section 1, Township 22 North, Range 4 East, Willamette
6 Meridian lying west of the PSE right of way less the north 30
7 feet of DD No. 1. The entrance of the Site is at latitude
8 47°25'37"N, longitude 122°14'31"W. The address of the Site is
9 7215 South 196th, Kent, Washington. In addition, the Site
10 includes those contaminated areas designated by Roman numerals in
11 Figure 1 of the Scope of Work in proximity to the above-described
12 property excluding Area VI. All area boundaries are considered
13 approximate for all purposes and are subject to change in
14 accordance with determinations made pursuant to subparagraph
15 IV.B.2. of the Scope of Work;

16 I. "Off-property"--the entire Site as defined above, with
17 the exception of Areas I and VI shown in Figure 1 of the Scope of
18 Work;

19 J. "State"--the State of Washington;

20 K. "Western Processing"--Western Processing Company, Inc.,
21 its predecessors, successors, assigns, affiliates and
22 subsidiaries;

23 L. "Work"--the remedial action to be undertaken at the
24 Site as described generally in Paragraph VII and more
25 specifically in the Scope of Work and in the detailed Work plans
26 to be submitted by the Consenting Defendants and approved by the

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1 Governments following entry of this Consent Decree. The Work
2 also includes meeting performance standards;

3 M. "Non-Settlers"--those potentially responsible parties
4 who are not signatories to this Consent Decree.

5
6 IV

7 PARTIES BOUND

8 This Consent Decree shall apply to and be binding upon the
9 signatories, their successors and assigns. The undersigned
10 representative of each party certifies that he or she is fully
11 authorized to enter into the terms and conditions of this Consent
12 Decree and to execute and legally bind such party to this
13 document. The Consenting Defendants shall provide a copy of this
14 Consent Decree to each contractor or subcontractor retained to
15 perform Work contemplated by this Consent Decree and shall
16 condition any contract for such Work on compliance with this
17 Consent Decree.

18
19 V

20 WESTERN PROCESSING SITE TRUST

21 A. The Consenting Defendants shall establish a Western
22 Processing Site Trust Fund ("Trust Fund") pursuant to the
23 provisions of a trust instrument (the "Trust Agreement"). At
24 least one of the Trustees of the Trust Fund shall be a commercial
25 bank. The Governments shall be allowed to review the Trust
26 Agreement prior to its being executed by Consenting Defendants

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1 and prior to the Governments' execution of this Consent Decree.
2 The Consenting Defendants shall file a copy of the executed Trust
3 Agreement with the Court simultaneously with the lodging of this
4 Consent Decree with the Court.

5 B. The Consenting Defendants shall make payments to the
6 Trust Fund in sufficient amounts and in sufficient time to both
7 make the payments to the Governments under Paragraph VI and
8 assure the uninterrupted progress and timely completion of the
9 Work. The Trustees shall use the money in the Trust Fund for
10 these purposes and any other purposes allowed by the Trust
11 Agreement. The allocation among Consenting Defendants of the
12 total amount required for these purposes shall be as specified in
13 the Trust Agreement. Each Consenting Defendant shall make
14 payments to the Trust Fund of the total amount allocated to it,
15 according to the following schedule:

<u>Portion of the</u> <u>Allocation</u>	<u>Schedule in Time After</u> <u>Entry of the Decree</u>
25%	21 days
15%	3 Months
10%	6 Months
10%	12 Months
10%	24 Months
15%	36 Months
15%	48 Months

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1 C. The Trustees shall have the authority under the Trust
2 Agreement to adjust the payment schedule and total payments (but
3 not the allocation percentages) as required to assure the
4 uninterrupted progress and timely completion of the Work. If
5 additional amounts are needed, the Consenting Defendants, upon
6 notification and within the time prescribed by the Trustees,
7 shall pay to the Trust Fund such additional amounts, which shall
8 be in the same proportion relative to each other as the other
9 payments required under this Paragraph V.

10 D. The Trustees may, at any time, distribute funds to the
11 Consenting Defendants and the United States from the Trust Fund,
12 to the extent that the Fund has accumulated more funds than will
13 reasonably be needed to perform the Work. Such distributions, if
14 any, shall not relieve the Consenting Defendants of their payment
15 responsibilities under this Consent Decree. In addition, subject
16 to subparagraph VI.B.2. of this Consent Decree, all funds
17 remaining in the Trust Fund following completion of the Work in
18 full compliance with this Consent Decree shall be distributed by
19 the Trustees among the Consenting Defendants and the
20 United States. All distributions to Consenting Defendants under
21 this subparagraph V.D. shall be in the same proportions relative
22 to each other as the payments by each Consenting Defendant to the
23 Trust Fund.

24 E. The payments made by each Consenting Defendant required
25 under this Paragraph or under Paragraph VI are neither a penalty,
26

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1 a monetary sanction, nor moneys paid into a court of the
2 United States within the meaning of 28 U.S.C. §§ 1041 and 2042.

4 VI

5 PAYMENT OF COSTS

6 A. Past Federal Response Costs.

7 1. This subparagraph VI.A.1. generally describes the
8 agreement between the United States and the Consenting Defendants
9 for reimbursement of response costs incurred by the United States
10 prior to entry of this Decree. The United States agrees to
11 accept payment of Three Million Five Hundred Thousand Dollars
12 (\$3,500,000) as partial reimbursement for such response costs, if
13 in its nonreviewable prosecutorial discretion, it determines that
14 there exist viable cases against Non-Settlers from whom it will
15 seek the remaining response costs incurred prior to entry of this
16 Decree not paid by the Consenting Defendants pursuant to this
17 Paragraph VI. However, if the United States determines, in the
18 exercise of its nonreviewable prosecutorial discretion, that
19 viable cases against Non-Settlers do not exist, then the
20 Consenting Defendants shall pay Six Million Dollars (\$6,000,000)
21 to the United States as partial reimbursement for response costs
22 incurred prior to entry of this Decree. This agreement is based
23 on the parties' estimate that the Work will cost Forty Million
24 Dollars (\$40,000,000). If the actual cost of the Work is less
25 than Forty Million Dollars (\$40,000,000), then the Consenting
26

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1 Defendants will provide additional payments to the United States
2 as set forth in subparagraph VI.B.2.

3 2. Within thirty (30) days after the entry of this Decree,
4 the Consenting Defendants shall pay the United States Two Million
5 Five Hundred Thousand Dollars (\$2,500,000). If, however, the
6 United States makes the determination pursuant to subparagraph
7 VI.A.3. that it will not initiate or maintain a cost recovery
8 action against Non-Settlors, the Consenting Defendants shall
9 instead pay Five Million Dollars (\$5,000,000). In either event,
10 the remaining One Million Dollars (\$1,000,000), plus interest
11 thereon from the date of entry of the Consent Decree calculated
12 pursuant to 28 U.S.C. § 1961, shall be paid to the United States
13 within thirty (30) days of the Consenting Defendants' receipt of
14 notice from the Governments of the proper completion of the
15 off-property remedial Work required by subparagraph IV.B.2. of
16 the Scope of Work. If there is a dispute regarding that remedial
17 Work, within thirty (30) days of agreement between the parties or
18 after a court order resolving such dispute, the Consenting
19 Defendants shall pay the United States One Million Dollars
20 (\$1,000,000) less the cost of the Work, if any, conducted by the
21 Consenting Defendants for which it was determined the Consenting
22 Defendants were not responsible pursuant to the criteria of
23 subparagraph IV.B.2. of the Scope of Work. The payments required
24 under this subparagraph shall be reduced by the total credits
25 provided to certain individual Consenting Defendants pursuant to
26 Paragraph 15 of the Stipulation between the Governments and such

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1 Consenting Defendants dated May 15, 1986. Each such credit shall
2 be applied against the payment obligation of the Consenting
3 Defendant entitled to that credit under the Stipulation.

4 3. At the time the United States executes this Decree, the
5 United States shall consider the viability of the cases against
6 Non-Settlers and determine, in the exercise of its nonreviewable
7 prosecutorial discretion, which of those Non-Settlers, if any, it
8 shall bring or maintain an action against for reimbursement of
9 response costs. Within five (5) days of executing this Decree,
10 the United States shall notify the Consenting Defendants whether
11 or not it will initiate or maintain such an action against any of
12 the Non-Settlers. This notice shall state the amount of payment
13 required by subparagraph VI.A.2.

14 4. The United States and the Consenting Defendants agree
15 that the response costs incurred by the United States as of entry
16 of this Consent Decree are comprised of the following categories
17 of cost items incurred between 1982 and the date of entry of this
18 Decree:

19 Emergency Removal
20 REM Contracts
21 National Lab Contract
22 Field Investigation Team
23 Enforcement Contracts
24 Technical Assistance Team
25 National Enforcement Investigation Center
26 Overflights
Oversight of Phase I
Groundwater Modeling Contract (Battelle)
Cooperative Agreement - Washington Department of Ecology
Payroll and Associated Costs
Travel
Interest

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1 5. The United States and the Consenting Defendants agree
2 that if the Consenting Defendants pay Three Million Five Hundred
3 Thousand Dollars (\$3,500,000) pursuant to subparagraphs VI.A.2.
4 and VI.A.3., the United States is not being reimbursed for the
5 following items:

6 Emergency Removal	1983
REM Contracts	1983 through June 1985
7 National Lab Contract	1983 through June 1985
Field Investigation Team	1983 through June 1985
8 Enforcement Contracts	1983 through June 1985
Technical Assistance Team	1983 through June 1985
9 National Enforcement	
Investigation Center	1983
10 Overflights	1983 through June 1985
Oversight of Phase I	1984
11 Groundwater Modeling Contract	
(Battelle)	1984
12 Cooperative Agreement - Washington	
Department of Ecology	1984 through June 1985
13 Payroll and Associated Costs	1983 through 1986
Interest	1985 and 1986

14
15 B. Federal Oversight Costs.

16 1. Within thirty (30) days of the entry of this Decree,
17 the Consenting Defendants shall pay One Million Two Hundred Fifty
18 Thousand Dollars (\$1,250,000) to the United States as partial
19 payment of costs to be incurred for Federal oversight of the
20 Work. Additional costs incurred by the United States pursuant to
21 subparagraphs XII.D. and XIX.D. below are not subject to
22 subparagraphs VI.B.1. or VI.B. hereof and therefore are not the
23 subject of any compromise or settlement pursuant to this Decree.

24 2. The United States has agreed to the reimbursement
25 scheme of this Paragraph VI in consideration of the Consenting
26 Defendants' performance of the Work, which the parties estimate

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1 will cost Forty Million Dollars (\$40,000,000). If the actual
2 cost of the Work is less than Forty Million Dollars
3 (\$40,000,000), the Consenting Defendants shall pay the
4 United States fifteen (15) percent of the difference between
5 Forty Million Dollars (\$40,000,000) and the actual cost. The
6 parties agree that such payment is for oversight costs incurred
7 by the United States after entry of the Decree and is in addition
8 to the payment required by subparagraph VI.B.1. If the actual
9 cost is greater than Forty Million Dollars (\$40,000,000), such
10 cost shall be borne by the Consenting Defendants. The
11 calculation of the actual cost of the Work shall occur within one
12 (1) year after completion of Area I cap construction and shall be
13 based on the actual costs incurred through such time plus the
14 present value of the remaining Work cost. The Consenting
15 Defendants shall make the payment required by this
16 subparagraph VI.B.2. within thirty (30) days of the calculation.
17

18 C. State Costs.

19 Within thirty (30) days of the entry of this Decree, the
20 Consenting Defendants shall pay the State Eight Hundred Fifty
21 Thousand Dollars (\$850,000) as partial reimbursement for past and
22 future civil, litigation, administrative, enforcement, response,
23 and oversight costs incurred by the State. Pursuant to
24 Paragraph 17 of the Stipulation between the Governments and
25 certain Consenting Defendants dated May 15, 1986, the amount to
26 be paid to the State under the preceding sentence shall be

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1 increased by the amount of State moneys actually spent on the
2 remedial action contracts or subcontracts under the Stipulation.
3 The State retains the right to seek recovery from Non-Settlers of
4 Four Hundred Fifteen Thousand Dollars (\$415,000) in response
5 costs it has incurred but for which it was not reimbursed
6 pursuant to this subparagraph VI.C.
7

8 D. General.

9 1. All payments to the United States pursuant to this
10 Paragraph VI shall be made by certified check payable to
11 EPA - Hazardous Substances Response Trust Fund, and sent to the
12 United States Attorney for the Western District of Washington.
13 All payments made to the State pursuant to this Paragraph VI
14 shall be made to the General Fund of the Treasury of the State of
15 Washington.

16 2. The payments required by this Paragraph VI shall be
17 made whether or not each Consenting Defendant pays to the Western
18 Processing Site Trust Fund the amounts required by Paragraph V of
19 this Consent Decree.

20 3. Unless the United States and the State do not initiate
21 and maintain a cost recovery action against Non-Settlers, any
22 claim related to the Site which the Consenting Defendants have
23 against a Non-Settlor shall be subordinated to the Site-related
24 claims of the United States and the State against any such
25 Non-Settlor. If the United States or the State obtains a
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1 judgment against a Non-Settlor in any subsequent action either
2 may bring for reimbursement of response costs, such judgment
3 shall have priority over any Site-related judgment obtained by
4 the Consenting Defendants against the same Non-Settlor.

5 4. The Consenting Defendants shall maintain detailed
6 records of all costs incurred pursuant to this Consent Decree.
7 No later than March 31 of each calendar year hereafter, the
8 Consenting Defendants shall submit to the Governments an
9 accounting of the costs incurred during the previous calendar
10 year. Upon request by the Governments, the Consenting Defendants
11 shall produce the detailed records related to such annual
12 accountings.

14 VII

15 REMEDIAL ACTION

16 A. The Scope of Work to be performed by the Consenting
17 Defendants at and about the Site is attached to this Consent
18 Decree as Appendix B and is herein incorporated by reference in
19 its entirety. The Scope of Work requires that the Consenting
20 Defendants submit Work plans for approval by the Governments and
21 implement the Work after receiving Governmental approval. All
22 such approved Work plans shall become a part of this Decree, and
23 this Decree shall be so amended upon and by the filing of
24 approved Work plans with the Court. The Work to be performed at
25 the Site includes, inter alia:

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1 1. Sampling and analysis of off-property soil for the
2 purpose of determining areas contaminated from activities
3 associated with Western Processing and removing or covering such
4 off-property contamination;

5 2. Sampling, analyzing, and excavating an initial
6 quantity of ten thousand (10,000) cubic yards of highly
7 contaminated material (defined in the Scope of Work as specific
8 waste) from Area I of the Site for disposal off-site in an
9 approved facility;

10 3. Extracting and treating shallow groundwater for a
11 minimum period of seven (7) years, subject to
12 subparagraph IV.D.6.a. of the Scope of Work;

13 4. Reducing the concentration of
14 trans 1,2-dichloroethylene in the regional groundwater through a
15 combination of soil excavation and groundwater extraction;

16 5. Protecting Mill Creek by meeting performance
17 standards for thirty (30) years after ceasing groundwater
18 extraction;

19 6. Following groundwater extraction and treatment,
20 placing a cap over Area I;

21 7. Monitoring regional and shallow groundwater and
22 Mill Creek and maintaining the cap and covers for thirty (30)
23 years; and

24 8. Removing Mill Creek and East Drain sediment which
25 has been contaminated by activities of Western Processing.
26

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1 B. The Governments and the Consenting Defendants agree
2 that the Work, or the Work as modified in accordance with the
3 terms of this Consent Decree and approved by the Governments or
4 the Court, is consistent with the National Contingency Plan (NCP)
5 and that the amounts paid by the Consenting Defendants to perform
6 the Work are necessary costs of response.

8 VIII

9 PERFORMANCE OF WORK AND INSURANCE

10 A. The Consenting Defendants shall be jointly and
11 severally responsible for their performance and completion of the
12 Work, and they shall assume all liability arising out of or
13 relating to the acts or omissions of the Consenting Defendants,
14 their contractors, consultants, or agents in the performance of
15 the Work or failure to fully perform or complete the Work.

16 B. The Consenting Defendants shall cause to be purchased
17 and maintained in force insurance policies which shall fully
18 protect the Governments and the public against all liability
19 arising out of the acts or omissions of the Consenting
20 Defendants, their contractors, consultants, or agents in the
21 performance of the Work. The insurance policies shall contain
22 coverage of the type and the amounts shown in Appendix C hereto.

23 IX

24 COMPLETION OF WORK AND PROGRESS REPORTS

25 The Work shall be completed in accordance with the
26 standards, specifications and schedules required by the Scope of

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1 Work and the approved Work plans. Until all Work is completed,
2 the Consenting Defendants shall provide the Governments with a
3 written summary of activities and written narrative reports on
4 project progress every month. The reports shall describe the
5 actions which have been taken toward achieving compliance with
6 this Consent Decree, as well as the actions which are scheduled
7 for the next month.

8
9 X

10 STIPULATED PENALTIES AND FORCE MAJEURE

11 A. If the Consenting Defendants fail to comply with any of
12 the following requirements, they shall pay a stipulated penalty
13 of One Thousand Dollars (\$1,000) per day for each of the first
14 seven days of noncompliance and Five Thousand Dollars (\$5,000)
15 per day for each day of noncompliance thereafter:

16 1. Timely submission of the Work plan and schedule
17 required by Paragraph V of the Scope of Work and all other Work
18 plans required by the Scope of Work;

19 2. Timely submission of the quality assurance/quality
20 control (QA/QC) Work plans and the community protection portion
21 of the Health and Safety Plans;

22 3. Operation of the stormwater treatment plant as
23 required by the Scope of Work;

24 4. Commencement and completion of the Area I soil
25 sampling and analysis program pursuant to the dates in the
26 approved Work plan;

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1 5. Commencement and completion of specific waste and
2 containerized waste removal from Area I (including utility
3 removal from Area I and back-filling and grading of Area I)
4 pursuant to the dates in the approved Work plan;

5 6. Removal of Area I non-containerized soil and
6 non-soil materials pursuant to subparagraph IV.A.3 of the Scope
7 of Work in accordance with the Governments' requirements;

8 7. Commencement and completion of the capping of
9 Area I pursuant to the dates in the approved Work plan;

10 8. Maintenance of the Area I cap for the required
11 time period;

12 9. Commencement and completion of the off-property
13 soil sampling and analysis program pursuant to the dates in the
14 approved Work plan;

15 10. Commencement and completion of off-property
16 excavation and the off-property cover pursuant to the dates in
17 the approved Work plan;

18 11. Maintenance of the off-property cover for the
19 required time period;

20 12. Operation of the groundwater extraction and
21 treatment system for the required time period and timely
22 performance of the annual evaluation of the extraction and
23 treatment system;

24

25

26

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1 13. Performance of the groundwater and Mill Creek/East
2 Drain monitoring program for the required time period and timely
3 reporting of the results;

4 14. Commencement and completion of the Mill Creek/East
5 Drain sediment sampling and excavation pursuant to the dates in
6 the approved Work plan;

7 15. Timely submission of conditionally required action
8 studies and, if required, plans pursuant to subparagraph IV.E. of
9 the Scope of Work; and

10 16. Commencement and completion of any conditionally
11 required actions pursuant to the dates in the approved Work plan.

12 B. If the Consenting Defendants fail to comply with any
13 performance standard required by the Scope of Work, they shall
14 immediately notify the Governments of such violation, and
15 stipulated penalties shall accrue at One Thousand Dollars
16 (\$1,000) per day for each parameter or requirement of a
17 performance standard which is violated. Noncompliance shall be
18 deemed a continuing daily violation until such time as the
19 Consenting Defendants demonstrate compliance with the relevant
20 parameter or requirement. In the event the Consenting Defendants
21 implement and complete a conditionally required action approved
22 by the Governments in accordance with subparagraph IV.E. of the
23 Scope of Work, they shall be excused from payment of any.
24 stipulated penalties which accrued after the Consenting
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1 Defendants' notification to the Governments of the relevant
2 noncompliance.

3 C. Force Majeure. If the Consenting Defendants fail to
4 complete properly or in a timely fashion any Work because of
5 circumstances beyond their control which cannot be overcome by
6 due diligence, such noncompliance shall not be a violation of
7 their obligations under this Consent Decree and shall not make
8 them liable for stipulated penalties. To the extent
9 noncompliance is caused by such circumstances beyond their
10 control, the time for performance of Work affected by the
11 circumstances shall be extended as appropriate.

12 D. The Consenting Defendants shall promptly notify the
13 Governments of any occurrence which may result in noncompliance
14 with any term of this Consent Decree and is caused by
15 circumstances beyond their control which cannot be overcome by
16 due diligence. Such notification shall be in writing and shall
17 fully describe the nature of the noncompliance, the reasons
18 therefor, the expected duration of the noncompliance, the actions
19 which will be taken to mitigate further noncompliance and whether
20 the noncompliance may, in the opinion of the Consenting
21 Defendants, cause or contribute to an endangerment to public
22 health, welfare, or the environment. If the Consenting
23 Defendants fail to provide the notice required by this
24 subparagraph X.D., they may not, at the nonreviewable option of
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1 the Governments, receive an extension of time for performance of
2 the affected Work.

3 E. If the Consenting Defendants and the Governments cannot
4 agree whether the force majeure clause of subparagraph X.C.,
5 above, is applicable, or cannot agree on an extension of time for
6 performance of affected Work, the dispute is subject to the
7 dispute resolution procedures of Paragraph XXII. Neither
8 increased costs or expenses in connection with the performance of
9 the Work nor normal rainfall, i.e., that which is equal to or
10 less than a twenty-five (25) year storm event, shall constitute a
11 circumstance beyond the control of the Consenting Defendants.

12 F. Payment of any stipulated penalty shall not relieve the
13 Consenting Defendants from complying with the Work required by
14 this Consent Decree or in any way limit the Governments' right to
15 enforce the terms of this Decree in any way, including seeking
16 additional penalties or injunctive relief.

17 G. Notwithstanding subparagraphs X.A. through F. above, if
18 at any time the Consenting Defendants have reason to believe they
19 will be unable to meet any schedule specified in the Scope of
20 Work or an approved Work plan, the Consenting Defendants shall
21 immediately notify the Governments.

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XI

ALTERNATE DISPOSAL ARRANGEMENTS

If all hazardous waste facilities located within EPA Region 10 do not meet the requirements for off-site disposal specified in the May 6, 1985 memorandum entitled "Procedures for Planning and Implementing Off-Site Response Actions" from Jack W. McGraw, EPA Acting Assistant Administrator for Solid Waste and Emergency Response, or any amendments or supplements thereto, the Consenting Defendants shall seek either the Governments' approval for disposal of the Contaminants at another Government approved facility or the Governments' approval for temporary storage of the Contaminants on-site or at another temporary storage location until a Government approved hazardous waste facility will accept such wastes. However, if application of the above-mentioned memorandum, or any amendments or supplements thereto, or other Federal requirements preclude the use of all Region 10 hazardous waste facilities for disposal of the Contaminants and temporary storage alternatives are not approved by the Governments, the Governments and the Consenting Defendants shall immediately enter negotiations to develop an acceptable alternative consistent with the requirements and performance standards of this Consent Decree, EPA policy as expressed in the McGraw memorandum, or amendments or supplements thereto, and the NCP. Alternatives to be considered shall include treatment, destruction, and off-site disposal at hazardous waste facilities in Regions 8 and 9, but

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1 shall not include disposal of untreated Contaminants on the
2 Site. Any alternatives considered by the Consenting Defendants
3 not previously evaluated in the Western Processing Feasibility
4 Study shall be evaluated consistent with the NCP and submitted to
5 the Governments for review and approval. Before the Governments
6 select a remedial action other than disposal at a Government
7 approved hazardous waste facility, the Governments shall provide
8 for a public comment period and shall amend the Record of
9 Decision (ROD) as appropriate. If, after the ROD is amended, the
10 parties are unable to reach agreement as to whether the
11 alternative selected by the Governments is appropriate, the
12 dispute shall be subject to the dispute resolution procedures of
13 Paragraph XXII of this Consent Decree. The Consenting Defendants
14 are not relieved of their obligations under this Consent Decree
15 until all Contaminants relevant to this Paragraph XI are treated,
16 destroyed, or permanently disposed of off-site. With respect to
17 any resolution of disposal issues pursuant to this Paragraph XI,
18 the Governments may adjust the schedules in the approved Work
19 plans accordingly or the Consenting Defendants may apply for
20 relief under Paragraph X hereof.

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22 XII

23 SITE ACCESS AND LAND USE NOTIFICATIONS

24 A. Until all Work required by this Decree is completed in
25 accordance with Paragraph IX, the Governments, the Consenting
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1 Defendants, and their respective authorized representatives shall
2 have access to the Site at all times in order to perform the Work
3 or to observe and monitor the progress of the Work; to take
4 samples at the Site; or otherwise to facilitate the cleanup of
5 the Site. Subject to Paragraph XIII, EPA, the State and the
6 Consenting Defendants agree that any activities undertaken by
7 them or their authorized representatives at the Site shall not
8 impede the performance of the Work.

9 B. To the extent that access to or easements over the Site
10 or property other than the Site is not authorized by this Consent
11 Decree, the Consenting Defendants shall use their best efforts to
12 gain access to or easements over such property for the purpose of
13 accomplishing the requirements of this Consent Decree. If the
14 Consenting Defendants are unable to obtain such access or
15 easements under reasonable terms and conditions, including costs,
16 the Governments agree to assist, consistent with their authority,
17 the Consenting Defendants in obtaining such access or easements.

18 C. The Consenting Defendants shall use their best efforts
19 to obtain the land use notifications detailed below. If the
20 Consenting Defendants are unable to obtain the land use
21 notifications under reasonable terms and conditions, including
22 costs, the Governments shall provide assistance, consistent with
23 their authority, to obtain such land use notifications:
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1 1. Area I - Within thirty (30) days after entry of
2 the Consent Decree or before any transfer of ownership of Area I,
3 whichever is earlier, a notation shall be placed in the property
4 records in the King County Recorder's Office that will, in
5 perpetuity, notify any potential purchaser of the property that:

6 a. The land has been used to manage hazardous
7 substances and waste;

8 b. Post-remedial action land use is restricted
9 such that use of the property must never be allowed to disturb
10 the integrity of the final cover, or any other component of any
11 containment system, or the function of the Site's monitoring
12 system, unless the Regional Administrator for EPA Region 10 and
13 the State find that the disturbance:

14 i. is necessary to the proposed use of the
15 property and will not increase the potential hazard to human
16 health or the environment; or

17 ii. is necessary to reduce a threat to human
18 health or the environment; and

19 c. The use of groundwater beneath the property
20 may be restricted and anyone seeking to use such groundwater must
21 comply with present and future restrictions placed on the use of
22 such groundwater by the City of Kent or the State's Department of
23 Ecology (Ecology).

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1 2. Area V - Within thirty (30) days after entry of
2 the Consent Decree or before any transfer of ownership of Area V,
3 whichever is earlier, a notation shall be placed in the property
4 records in the King County Recorder's Office that will, in
5 perpetuity, notify any potential purchaser of the property that
6 the use of groundwater beneath the property may be restricted and
7 anyone seeking to use such groundwater must comply with present
8 and future restrictions placed on the use of such groundwater by
9 the City of Kent or Ecology.

10 3. Other Areas East of Mill Creek - If, at the time
11 groundwater extraction ceases, groundwater in any other area east
12 of Mill Creek does not meet all applicable or relevant drinking
13 water standards and criteria and any such noncompliance may have
14 been caused by releases from the Site or the activities of
15 Western Processing, a notation shall be placed in the property
16 records in the King County Recorder's Office that will, in
17 perpetuity, notify any potential purchaser of the property that
18 the use of groundwater beneath the property may be restricted and
19 anyone seeking to use such groundwater must comply with present
20 and future restrictions placed on the use of such groundwater by
21 the City of Kent or Ecology.

22 D. In the event the Governments incur costs in providing
23 assistance to the Consenting Defendants pursuant to this
24 Paragraph XII, the Consenting Defendants shall reimburse the
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1 Governments for all such costs within thirty (30) days after the
2 Governments have provided an accounting.

4 XIII

5 AUTHORITY OF REMEDIAL PROJECT MANAGER

6 The Governments will designate a Remedial Project Manager
7 (RPM) and an alternate to observe and monitor the progress of the
8 Work being performed. The RPM shall have the authority vested by
9 40 C.F.R. §§ 300 et seq., including authority to require
10 cessation of the performance of the Work, any portion thereof or
11 any other activity at the Site which in the opinion of the RPM,
12 may or does present or contribute to an endangerment to public
13 health, welfare or the environment or cause or threaten to cause
14 the release of Contaminants from the Site. In the event the RPM
15 does require such cessation of the Work, the RPM then shall have
16 the authority to require the Consenting Defendants to take
17 actions in accordance with the instructions of the RPM to avoid
18 or mitigate the endangerment or release which the RPM believes
19 may occur. If the Consenting Defendants or the Trustees object
20 to any order by the RPM, they may petition the Court to stay or
21 set aside the order of the RPM. The filing of such a petition
22 shall not operate to stay the effectiveness of such order, nor
23 shall it in any way operate to preclude the Governments from
24 taking response actions, or from seeking to enforce such order.

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1 RPM orders are not subject to the dispute resolution procedures
2 of Paragraph XXII.

4 XIV

5 DATA GATHERING REQUIREMENTS

6 A. The Consenting Defendants shall take such samples as
7 required by the provisions of the Scope of Work or the approved
8 Work plans. The RPM has authority to oversee the Work and to
9 require split sampling where appropriate. The Consenting
10 Defendants agree to cooperate with representatives of the
11 Governments to permit such representatives to take samples,
12 including split samples, at all locations at the Site. All
13 sampling and analysis shall be done by all parties pursuant to
14 EPA protocols and the EPA quality assurance and quality control
15 (QA/QC) requirements effective as of the date of sampling.
16 Arrangements for Government sampling shall be made by the RPM.
17 The Consenting Defendants agree that samples taken by them shall
18 be handled according to the chain of custody procedures
19 established by the EPA National Enforcement Investigation Center,
20 which procedures will be provided by EPA. Before disposal of any
21 samples, the Governments shall be given thirty (30) days notice
22 and opportunity to take possession of such samples.

23 B. The Consenting Defendants shall promptly make available
24 to the Governments, upon request, any and all information
25 relating to the Work at the Site and the Contaminants or other
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1 materials removed from the Site with the exception of information
2 contained in documents subject to any applicable confidentiality
3 privilege or doctrine. The Governments shall promptly make
4 available to the Consenting Defendants, upon request, all quality
5 assured data relating to the Site obtained by the Governments or
6 their contractors after entry of the Consent Decree. If
7 requested by the Governments, the Consenting Defendants shall
8 provide access to employees with knowledge of relevant facts
9 concerning the performance of the Work for the purposes of
10 investigation, information gathering or testimony related to the
11 Work and Contaminants found at the Site. The Consenting
12 Defendants agree to preserve all records for a period of ten (10)
13 years after the completion of the Work, provided, however that
14 within this ten (10) year period the Consenting Defendants may
15 forward all such documents to EPA and thereby satisfy the
16 requirements of this provision. The Consenting Defendants shall
17 require their contractors to make available to EPA and the State
18 all documents referred to in this subparagraph. All information
19 provided the Governments shall be deemed nonconfidential unless
20 otherwise specified at the time of production by the Consenting
21 Defendants.

22 C. All information, records or other documents produced by
23 the Consenting Defendants or their contractors shall be available
24 to the public unless identified as confidential business
25 information by the Consenting Defendants and determined to be
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1 such in conformance with 40 C.F.R. Part 2, or applicable
2 Washington law, or is determined by the United States to come
3 within an exemption to public disclosure pursuant to the Freedom
4 of Information Act.

6 XV

7 PRESERVATION OF RECORDS

8 The Consenting Defendants agree that they will each preserve
9 for a period ten (10) years after completion of the Work and
10 termination of this Consent Decree, unless otherwise ordered by
11 the Court, all documents in their possession or the possession of
12 any of their divisions, employees, agents, accountants or
13 attorneys as of the date of entry of this Consent Decree, that
14 relate to any transaction or business with Western Processing,
15 provided, however, that within this period any company may
16 forward all such documents to EPA and thereby satisfy the
17 requirements of this provision. Any party to this Decree may
18 have access to such documents. Notwithstanding any other
19 provision of this Consent Decree, the Governments and the
20 Consenting Defendants retain any rights they may otherwise have
21 governing the production of such records and documents.

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COMMUNITY RELATIONS

The Governments shall maintain the responsibility for community relations at the Site. However, the Consenting Defendants shall cooperate with the Governments and shall:

A. Prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of Work plans and the completion of engineering design. The Governments will finalize and distribute such fact sheets and prepare and distribute public notices of the Governments' presentations and meetings;

B. Notify and coordinate with the RPM prior to all press releases and fact sheet preparation, and before major meetings with the interested public and local government;

C. Participate in public presentations on the progress of Work at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter;

D. In cooperation with the Governments, continue the information repositories at the City of Kent and EPA Regional libraries. At a minimum, copies of all public notices, fact sheets, and press releases, all quality assured groundwater, surface water, soil sediment, and air monitoring data, Work plans, supplemental remedial planning documents, and all

1 other similar documents relating to performance of these remedial
2 actions shall be promptly placed in these repositories; and

3 E. Participate in public presentations on the
4 conditionally required actions, if any are initiated. Public
5 presentations shall at a minimum be made during the design or
6 scoping of the study and again when the study is completed.

7
8 XVII

9 COMPLIANCE WITH ALL LAWS

10 All Work undertaken pursuant to this Consent Decree shall be
11 performed in compliance with all applicable Federal and State
12 laws and regulations. The Consenting Defendants shall be
13 responsible for obtaining any Federal, State or local permits
14 which are necessary for the performance of the Work. The
15 Governments shall, if possible, expedite the processing of such
16 permits consistent with their authority. ←

17
18 XVIII

19 MODIFICATION OF WORK

20 A. No modification by the Consenting Defendants shall be
21 made in the performance of the Work which varies from the
22 standards, specifications, or schedules of completion contained
23 in the Scope of Work or the approved Work plans without prior
24 written approval of the Governments after written notification to
25 the Governments setting out the nature of and the reasons for any
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1 such requested modification; provided, however, modifications
2 approved by the RPM and recorded in field notes or meeting
3 minutes and signed by the RPM, shall satisfy the requirements of
4 this Paragraph XVII.

5 B. The Consenting Defendants may petition the Governments
6 for relief from the requirements of the Scope of Work if they can
7 demonstrate, based upon new information, that the Work
8 requirements are inconsistent with CERCLA or the NCP. Any
9 disputes arising under this subparagraph shall be resolved
10 pursuant to the dispute resolution procedures of Paragraph XXII.

11
12 XIX

13 COVENANT NOT TO SUE

14 A. To avoid litigation between the parties hereto and its
15 expense without impairing or affecting the claims of the
16 United States or the State against any person or entity other
17 than the Consenting Defendants, upon completion of the Work and
18 reimbursement of the United States and the State by the
19 Consenting Defendants, the United States does hereby covenant not
20 to sue or execute judgment in a civil action, or take any civil
21 or administrative action on behalf of EPA, the National
22 Oceanographic and Atmospheric Administration ("NOAA") or the
23 Department of Interior ("DOI") pursuant to the Comprehensive
24 Environmental Response, Compensation, and Liability Act of 1980,
25 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery
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1 Act, 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C.
2 §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.;
3 the Toxic Substances Control Act, 14 U.S.C. §§ 2601 et seq.; the
4 Safe Drinking Water Act, 42 U.S.C. §§ 300f. et seq.; the Federal
5 Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et
6 seq.; the Refuse Act, 33 U.S.C. § 407; or any other statutory or
7 common law enforcement authority of EPA, NOAA, and DOI; and the
8 State does hereby covenant not to sue or execute judgment in a
9 civil action, or take any civil or administrative action under
10 State or Federal statutory or common law concerning the
11 protection of health or the environment against the Consenting
12 Defendants, their successors or assigns arising out of or related
13 to the Covered Matters, as defined in subparagraph XIX.B.,
14 below. The completion of the Work and reimbursement of the
15 United States and the State pursuant to this Consent Decree are
16 conditions precedent to this covenant.

17 •B. Subject to the exclusions contained in
18 subparagraph XIX.D., the "Covered Matters" that are referred to
19 in the foregoing subparagraph and throughout this Consent Decree
20 are:

21 1. Costs incurred or to be incurred by the
22 Governments in connection with the Site, including removal,
23 remedial and response costs as defined in CERCLA, and all
24 investigative, litigation, administrative, oversight and
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1 personnel costs incurred before entry of this Decree, as well as
2 future administrative oversight costs related to the Work;

3 2. Civil liability to undertake or pay for the
4 response action included in the Work performed pursuant to this
5 Consent Decree;

6 3. All civil liability or civil responsibility
7 arising out of or related to the storage, treatment, handling,
8 disposal, transportation or presence of or actual or threatened
9 release or discharge of any Contaminants at, to, from, beneath or
10 near the Western Processing Site, including any action with
11 respect to on-site and off-site soil and shallow groundwater
12 cleanup, the cleanup of the plume of trans 1,2-dichloroethylene
13 described in subparagraph IV.D.2. in the Scope of Work, the
14 cleanup of Mill Creek, and also including any action relating to
15 injury to, destruction of or loss of natural resources of the
16 Governments within the meaning of CERCLA;

17 C. Federal law shall govern and control the interpretation
18 of this Consent Decree. However, to the extent that the law of
19 the State of Washington may be determined to control and govern
20 the interpretation of this Consent Decree, the parties do not
21 intend that this Paragraph shall be a release as the term is
22 defined by Washington law.

23 D. Nothing herein shall be construed as a covenant not to
24 sue or a release of the Consenting Defendants from any liability:
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1 1. For the failure of the Consenting Defendants to
2 perform the Work;

3 2. Arising out of or relating to the transportation,
4 treatment, handling, disposal, storage, or releases or threatened
5 releases of Contaminants arising as a result of the Work;

6 3. For contamination of regional groundwater, except
7 for the plume of trans 1,2-dichloroethylene described in
8 subparagraph IV.D.2. of the Scope of Work;

9 4. Where previously unknown or undetected conditions
10 that arise or are discovered at the Site after the time of entry
11 of the Consent Decree may present an imminent and substantial
12 endangerment to public health, welfare or the environment;

13 5. Where the Governments receive additional
14 information which was not available at the time of the Consent
15 Decree concerning the scientific determinations regarding the
16 health effects associated with levels of exposure, toxicity of
17 hazardous substances, contamination, or the appropriateness of
18 the remedial technologies for conditions at the Site, and this
19 additional information indicates that Site conditions may present
20 an imminent and substantial endangerment to the public health or
21 welfare or the environment; or

22 6. For costs incurred by the Governments pursuant to
23 Paragraph XII.

24 The Governments reserve the right: (a) to require the Consenting
25 Defendants to remedy or abate such conditions as may arise in
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1 subparagraphs XIX.D.1. through XIX.D.5. above; or (b) to take
2 remedial action using Hazardous Substances Response Trust Funds
3 and State funds and to recover such expenditures from the
4 Consenting Defendants.

5 E. Except as otherwise provided herein at
6 subparagraph VIII.A., the Consenting Defendants, in entering into
7 this Consent Decree do not admit, accept, or intend to
8 acknowledge any liability or fault by any party hereto with
9 respect to any matter arising out of or relating to the Site.

10 F. It is not the purpose of this Consent Decree nor the
11 intention of the parties to release any other persons or entities
12 not parties to this Consent Decree from any claims or
13 liabilities, the right to pursue being hereby expressly
14 reserved.

15 G. In consideration of the entry of this Consent Decree,
16 the Consenting Defendants agree not to make any claims pursuant
17 to Section 112 of CERCLA, 42 U.S.C. § 9612, against the Hazardous
18 Substance Response Trust Fund established by CERCLA for any
19 expenses related to this Consent Decree. Except as provided in
20 subparagraph IV.B.2 of the Scope of Work the Consenting
21 Defendants also agree not to assert any other claim, demand,
22 defense or cause of action related to Covered Matters against the
23 Governments.

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1 XX

2 FUTURE NEGOTIATIONS

3 If, at any time, Contaminants emanating from Western
4 Processing (other than the plume of trans 1,2-dichloroethylene
5 known as of the date of entry of this Consent Decree, a remedy
6 for which is provided in the Scope of Work) are found in the
7 regional groundwater west of Mill Creek, the Consenting
8 Defendants shall, within fifteen (15) days of discovery, notify
9 the Governments of the location, concentration, and suspected
10 origin of such contamination. Thereafter, the Consenting
11 Defendants shall enter into discussions with the Governments as
12 to the remedial actions, if any, necessary to remedy the
13 contamination. If, after such discussions, the Governments
14 determine that remedial actions are necessary, the Consenting
15 Defendants shall enter into negotiations with the Governments
16 within twenty (20) days of the Governments' determination.

17
18 XXI

19 FORM OF NOTICE

20 When notification is required by the terms of this Consent
21 Decree, it shall be in writing and addressed to:

22 UNITED STATES:

23 Superfund Coordinator
24 U.S. Environmental Protection Agency
25 1200 Sixth Avenue M/S 525
26 Seattle, Washington 98101

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1 STATE:

2 Deputy Director for Programs
3 Department of Ecology
4 M/S PV 11
5 Olympia, Washington 98504

6 CONSENTING DEFENDANTS:

7 The Boeing Company
8 P. O. Box 3707
9 M/S 13-31
10 Seattle, Washington 98124

11 XXII

12 DISPUTE RESOLUTION

13 A. Except as otherwise specifically provided for in this
14 Consent Decree, any dispute which arises with respect to the
15 meaning or application of this Consent Decree shall in the first
16 instance be the subject of informal negotiations between the
17 Consenting Defendants and the Governments. Such negotiations
18 shall be at the written request of the Governments', any one of
19 the Corporate Trustees specified in the Trust document to be
20 filed with the Court simultaneously with the Consent Decree, or a
21 majority of the Consenting Defendants. The period for informal
22 negotiations shall be thirty (30) days from the date of such
23 request unless otherwise extended or shortened by mutual written
24 agreement of the parties to the dispute. If the dispute is not
25 resolved during the informal negotiation period, the Governments'
26 position shall control unless any one of the Corporate Trustees
27 or a majority of the Consenting Defendants file a petition with
28 the Court setting forth the matter in dispute within fourteen

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1 (14) days after the end of the informal negotiation period and
2 until the Court rules on such petition. In an emergency, any
3 party to the dispute may file a petition prior to the expiration
4 of the informal negotiations period. Unless otherwise ordered by
5 the Court, the filing of a petition shall not operate to stay the
6 Work which is the subject of dispute, nor extend or postpone the
7 Consenting Defendants' obligations under this Consent Decree with
8 respect to the disputed issue.

9 B. The Court's determination shall bind all signatories to
10 this Consent Decree. Neither the Consenting Defendants nor the
11 Governments shall be entitled to attorney's fees or legal costs,
12 including those pursuant to the Equal Access of Justice Act,
13 5 U.S.C. § 504 and 28 U.S.C. § 2412, should they prevail in any
14 dispute.

15 C. In no event will the performance standards in the Scope
16 of Work, the Governments' authority to require removal of up to
17 ten thousand (10,000) cubic yards of specific waste from Area I,
18 or the United States' exercise of its prosecutorial discretion
19 pursuant to Paragraph VI be subject to dispute resolution. This
20 subparagraph shall not restrict any right the Consenting
21 Defendants might otherwise have to petition the Court for
22 modification of the Scope of Work pursuant to subparagraph
23 XVIII.B.

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1 D. Delay caused by formal dispute resolution in which the
2 Governments prevail shall not constitute a circumstance beyond
3 the control of the Consenting Defendants for purposes of being
4 excused from payment of stipulated penalties under Paragraph X.
5

6 XXIII

7 RETENTION OF JURISDICTION,
8 STAY AND DISMISSAL OF ACTION

9 A. The Court shall retain jurisdiction over this matter
10 for the purpose of enabling any party to this Decree to apply to
11 the Court for such orders as may be necessary or appropriate to
12 interpret, implement, modify or enforce the terms of this Decree,
13 or for any further relief that the interest of justice may
14 require.

15 B. The parties agree that this action is stayed in all
16 respects with regard to the claims between the parties to this
17 Consent Decree provided that such parties comply with all
18 requirements of this Decree. Except as is provided in
19 subparagraph XIX.D., the Governments' agree to dismiss this
20 action with prejudice against the Consenting Defendants after
21 completion of the Work required to be performed, reimbursement of
22 the Governments' costs and resolution of any outstanding disputes
23 pursuant to this Decree.
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UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

1 The United States, the State and the Consenting Defendants
2 by their duly authorized representatives agree to this Consent
3 Decree subject to the Department of Justice public notice
4 requirements found at 28 C.F.R. § 50.7.

5 DATED this 16th day of October, 1986.

6 THE UNITED STATES OF AMERICA

7 Department of Justice

8 *F. Henry Habicht II*
9 F. HENRY HABICHT II
10 Assistant Attorney General
11 Division of Land and
Natural Resources
Washington, D.C.

12 *Gene S. Anderson*
13 GENE S. ANDERSON
14 United States Attorney
Western District of Washington
Seattle, Washington

15 *Jackson L. Fox*
16 JACKSON L. FOX
17 Assistant United States Attorney
Western District of Washington
18 Seattle, Washington

19 *James L. Nicoll, Jr.*
20 JAMES L. NICOLL, JR.
21 Environmental Enforcement
Section
22 Washington, D.C.

Environmental Protection Agency

Thomas L. Adams, Jr.
THOMAS L. ADAMS, JR.
Assistant Administrator
for Enforcement and
Compliance Monitoring
Washington, D.C.

Robie G. Russell
ROBIE G. RUSSELL
Regional Administrator
Region 10
Seattle, Washington

Merrilee Caldwell
MERRILEE CALDWELL
Assistant Regional Counsel
Region 10
Seattle, Washington


Jerry M. Schwartz
JERRY M. SCHWARTZ
Office of Enforcement and
Compliance Monitoring
Washington, D.C.

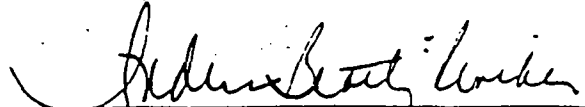
23 National Oceanographic and
24 Atmospheric Administration


25 *Elizabeth R. Mitchell*
John H. Robinson, by ERM
26

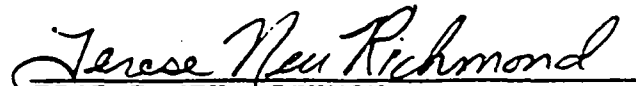
UNITED STATES ATTORNEY
3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

STATE OF WASHINGTON


KENNETH O. EIKENBERRY
Attorney General
Olympia, Washington 98504


ANDREA BEATTY RIMIKER
Director, Department of Ecology
Olympia, Washington 98504


JEFFREY GOLTZ
Assistant Attorney General
Olympia, Washington 98504


TERESE NEU RICHMOND
Assistant Attorney General
Olympia, Washington 98504

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3600 Seafirst Fifth Avenue Plaza
Seattle, WA 98104
(206) 442-7970

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DATED and entered this _____ day of _____,
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UNITED STATES DISTRICT JUDGE

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APPENDIX A

List of Consenting Defendants
to Consent Decree for
Western Processing Subsurface Cleanup

AKI (Automix Keyboards Inc.)
AT&T Technologies Inc.
Acme Inter-City Freightlines
Advance Electroplating Inc..
Advance Hard Chrome Inc.
Airo Services Inc.
Alaskan Copper Works
Alcan Canada Products Ltd.
American Boiler Works
American Can U.S.
American Tar
Amfac Fluid Power
Atlantic Richfield
Auto Warehousing Co.
Avtech Corp.
B.C. Ferry Corp.
Bayliner Marine Corp.
Bellevue School Dist.
Bemis Co., Inc.
Bethlehem Steel
Borden Chemicals-Western Div.
Borg Warner-York Div.
Burlington High School
Calgon Corp.
Cam Industries Inc.
Cascade Plating Co.
Cascade Pole Co.
Champion Int'l (St Regis)
Chemcentral/Seattle
Chevron Inc.
Chromium Co., Inc.
Circuit Services
City of Sumner (Fire Dept.)
Color Your World/Tecnecraft
Container Corp. of America
Data I/O Corp.
Dow Chemical Inc.
Dresser Industries (Magcobar)
EMF Corp.
Economics Laboratory

1	Evergreen Industries
2	Exxon Co.
3	Farster Construction
4	Federal Transfer Co.
5	Fentron Industries (Criton)
6	Finishing Unlimited
7	Flow Industries (Flow Research)
8	Freight Speed Inc.
9	Fruehauf Trailer Div.
10	Futura Home Products-Colortrym
11	G.M. Nameplate Inc.
12	General Electric
13	General Plastics Mfg. Co.
14	Geo. A. Hormel and Co.
15	Greyhound Corp. (Purex)
16	Guardsman Chemicals Inc.
17	H.W. Blackstock Co.
18	Harold LeMay Enterprises
19	Harry Lunstead Designs
20	Heath Techna (Criton Corp.)
21	Highline Community College
22	Hitco
23	Honeywell Corp.
24	Hygrade Food Products
25	Hytex Inc.
26	Hytex Finishes Co. (Heath Plating)
27	Industrial Plating Corp.
28	Inmont Co.
29	Intalco Aluminum Corp.
30	J.H. Baxter
31	J.M. Martinac Shipbuilding
32	Jarvie Paint
33	John Fluke Mfg. Co.
34	Joseph Simon & Sons Inc.
35	K.M.E. Manufacturing Inc.
36	Kent School Dist. #415
37	L.F.R. Knudsen Co.
38	Lake Union Drydock
39	Lawrence Electronics
40	Leber Ink Co., Inc.
41	Lynden Transport Inc.
42	Mannesman Tally Corp.
43	Marine Industries Northwest
44	Marine Iron Inc.
45	McCall Oil & Chem. Corp.
46	Metal Finishers Inc.
47	Metal Marine Pilot Corp.

1	Metro Seattle
2	Mobil Oil Co.
3	Monsanto
4	Morton Thiokol, Inc.
5	MTH Finishers Inc.
6	National Can Corp.
7	National Paper Box
8	Nemco Electric Co.
9	Northwest Metal Products
10	Northwest Molded Products
11	Northwest Plating Co.
12	Nuclear Pacific Inc.
13	Occidental Chemical Corp.
14	Omark
15	Owens Corning Fiberglass
16	Oxygen Sales
17	Pacific Car & Foundry Co.
18	Pacific Metallurgical Inc.
19	Pacific Propeller Co.
20	Pacific Western Eng. Corp.
21	Pennwalt Corp.
22	Physio Control
23	Pirelli Cables Ltd.
24	Pittsburgh Testing Laboratory
25	Precision Engineering
26	Quality Finishing Inc.
27	R.W. Rhine Inc.
28	Ratelco Inc.
29	Red Dot Corp.
30	Renton Issaquah Auto Freight
31	Resource Recovery Inc.
32	Reynolds Metals Co.
33	Rhone-Poulenc Inc.
34	Rics Transfer Co., Inc.
35	Ridgway Packaging Corp.
36	Rocket Research Co.
37	Rudd Co.
38	Safety Kleen Corp.
39	Sanmina Corp.
40	Santa Clara Circuits
41	Scott Paper Co.
42	Seattle Disposal
43	Seattle Times
44	Shell Oil Co.
45	Simpson Timber Co.
46	Sound Casket
47	Sound Delivery Service

1	Sperry Flight Systems
2	State of Wash.-DNR
3	State of Wash.-Dept. of Labor
4	Steel Products
5	Stuart Auto Products
6	Sundstrand Data Control
7	Surftech Finishes
8	Tacoma Moving & Storage
9	Tam Engineering
10	Taylor's Auto Body
11	Tektronix Inc.
12	Tel Tone
13	The Austin Co.
14	The Barthel Co. (Norcore)
15	The Boeing Company
16	The Chemithon Corp.
17	The Flecto Co., Inc.
18	The Furniture Bath
19	The Pittsburgh & Midway Coal
20	Todd Pacific Shipyards
21	Transco N.W. Inc. (Acme Metals)
22	Tri Way Industries
23	Tyee Aircraft
24	U.S. Oil & Refining
25	U.T. Barge Co.
26	United Drain Oil
27	United Services, Inc.
28	Universal Paint
29	Universal Plastics
30	University of Oregon
31	University of Puget Sound
32	University of Washington
33	Valley Enamel
34	Valley Medical Center
35	Van Vetter Inc.
36	Van Waters & Rogers
37	Vanport Industries Inc.
38	W.E.S. Plastics
39	W.R. Grace & Co.
40	Western Furnaces
41	Western Gear Corp.
42	Western Pneumatic Tube
43	Western Wood Preserving Co.
44	Weyerhaeuser Corp.
45	Williams Machinery, Ltd.
46	Zehrunge Chemical
47	Zepeda Instruments

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WESTERN PROCESSING SITE
CONSENT DECREE
SIGNATURE PAGE

The BOEING Company
consents to this Consent Decree, including all Appendixes
thereto, by its duly authorized representative on this 25th day
of June, 1986.

Company: THE BOEING COMPANY

Name: D. P. Beighle

Title: Sr. Vice President and Secretary

Signature: *D. P. Beighle*

Please return this to:

Western Processing Coordinating Committee
P. O. Box 3707 M/S 13-31
Seattle, Washington 98124

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APPENDIX B

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Scope of Work for

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Addressing Soil and Groundwater Contamination

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at and Emanating from

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the Western Processing Site

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June 17, 1986

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I

INTRODUCTION

This document sets forth the technical Scope of Work for cleanup of the Western Processing Company, Inc., Site in Kent, Washington. It shall be the responsibility of the Consenting Defendants to prepare, submit for approval, and fully implement Work plans incorporating each element of this Scope of Work, and to ensure that the Work plans as undertaken shall meet the performance standards set forth below. The numbered remedial action areas referred to in this Scope of Work are those as generally depicted in Figure 1.

II

OBJECTIVES

The objectives of the Work at the Western Processing Site are to:

1. Prevent direct human contact with or ingestion of contaminated soils;
2. Prevent the further spread of contaminated groundwater and remove contamination related to the Site from the groundwater aquifer;
3. Prevent further Contaminant discharges (via groundwater) which may be harmful to aquatic organisms in Mill Creek; and
4. Prevent contaminated stormwater runoff.

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III

GENERAL REQUIREMENTS

1. All Work (including conditionally required actions and monitoring) performed at and around the Site pursuant to this Scope of Work and Consent Decree shall be accomplished in accordance with Work plans which shall be prepared by the Consenting Defendants and submitted for review and approval by the Governments. Each Work plan shall include, as applicable, the design, construction sequence and schedule, and the maintenance, operating and monitoring requirements. The Consenting Defendants shall promptly correct any inconsistencies between the Work plans submitted by the Consenting Defendants and this Scope of Work or make any clarifications requested by the Governments during their review. In addition to the standard elements of a Work plan required under this paragraph, the groundwater extraction and treatment plan (subparagraph IV.D. below) shall include design assumptions, all modeling information and other engineering supporting materials as appropriate.

2. All facilities used by the Consenting Defendants for the off-site treatment, storage, or disposal of Contaminants shall be in compliance with the applicable requirements of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901, et seq., as amended November 1984. The Consenting Defendants shall obtain prior approval from the Governments for the use of any such facilities. The Governments may base their approval or disapproval on the criteria specified in the May 6, 1985

1 Memorandum entitled "Procedures for Planning and Implementing
2 Off-Site Response Actions" from Jack W. McGraw, EPA Acting
3 Assistant Administrator for Solid Waste and Emergency Response,
4 or any amendments or supplements thereto, or other Federal
5 requirements.

6 3. All Work, including sampling and other field data
7 gathering activities, shall be performed under an appropriate
8 health and safety plan for the protection of workers and the
9 surrounding community. The Consenting Defendants shall submit
10 the community protection portion of the health and safety plan to
11 the Governments for approval. The minimally acceptable air
12 monitoring program for the protection of the surrounding
13 community shall include real time particulate and organic
14 monitoring as part of the comprehensive monitoring program.

15 4. For all activities undertaken pursuant to this Scope of
16 Work and the Consent Decree, the Consenting Defendants shall be
17 responsible for appropriate safety measures with respect to all
18 active local utilities such as power, water, sewer, telephone,
19 and the Olympic pipeline.

20 5. All sampling and monitoring plans shall include a
21 quality assurance and quality control (QA/QC plan) plan. The
22 Consenting Defendants shall obtain approval from the Governments
23 for the QA/QC plans before sampling or monitoring begins.
24 Sampling and laboratory analyses of soils, groundwater,
25 sediments, surface water, air, and other materials shall be
26 performed in accordance with the EPA sampling and laboratory

1 protocols and quality assurance procedures in effect as of the
2 date of such sampling or analyses. Replicate samples will be
3 collected and analyzed by the Consenting Defendants only as
4 necessary to satisfy QA/QC protocols as described in the QA/QC
5 plan, or as requested by the Governments on a case-by-case
6 basis. With the exception of screening tests, the detection
7 limits shall be at least as low as the EPA-CERCLA contract
8 laboratory program standards. The Consenting Defendants shall
9 provide the Governments with the quality-assured data as they
10 become available. The Consenting Defendants shall also comply
11 with the data gathering requirements of Paragraph XIV of the
12 Consent Decree.

13 6. The Consenting Defendants shall ensure that activities
14 within the flood plain (as defined by the Federal Emergency
15 Management Agency's Flood Insurance Rate Map) of Mill Creek
16 undertaken pursuant to this Scope of Work and the Consent Decree
17 shall not adversely change flood elevations and shall comply with
18 the technical requirements of all applicable rules, regulations,
19 and ordinances.

20 7. An Area I stormwater control and treatment system shall
21 remain operable until no longer needed as determined by the
22 Governments. To prevent the discharge of Contaminants from and
23 erosion of the Site, stormwater runoff shall be controlled during
24 and after construction of the various components of the Work in
25 all areas. Upon petition of the Consenting Defendants, the
26

1 Governments may eliminate or modify the stormwater runoff control
2 requirement for specific off-property areas.

3 8. The definitions set forth in Paragraph III of the
4 Consent Decree shall apply throughout this Scope of Work.

6 IV

7 WORK PLAN COMPONENTS

8 A. Area I Soils

9 1. Soil Sampling and Analysis Program.

10 a. Drums, Tanks, Utilities and Process Lines--The
11 Consenting Defendants shall conduct a non-destructive subsurface
12 geophysical survey of Area I to locate drums, tanks, utilities
13 and process lines. The results of the survey, the areas proposed
14 for probing, and a sampling and analysis plan shall be submitted
15 to the Governments. After the Governments' approval, the
16 Consenting Defendants shall probe those areas where the survey
17 results indicate that drums, tanks, utilities or process lines
18 are likely to be present. Whenever drums or tanks are found, the
19 Consenting Defendants shall sample and analyze the contents.

20 b. Specific Wastes--Specific wastes are contaminated,
21 non-containerized soil or non-soil materials which: (1) may not
22 be cost-effectively removed by in-situ leaching and which could,
23 by their presence, prevent compliance with the Mill Creek water
24 quality performance standards after the pumping program is
25 terminated; or (2) contain or are comprised of Contaminants which
26 given their location, depth or physical or chemical properties

1 may migrate beyond the hydrogeologic boundary of Mill Creek in
2 quantities which could result in violations of applicable or
3 relevant standards; or (3) may adversely affect the stability of
4 any cap placed over Area I. The Consenting Defendants shall
5 submit to the Governments a sampling and analysis plan to
6 identify the location and extent of specific wastes. That plan
7 shall include a series of approximately seventy (70) test pits of
8 a size equivalent to that done by a backhoe and to the
9 approximate depth of the water table and approximately one
10 hundred fifty (150) soil borings to an approximate depth of
11 fifteen (15) feet, or an appropriate combination thereof, and
12 will include in its analysis of Contaminants assessment of the
13 leachability of the Contaminants from the samples. Upon approval
14 by the Governments, the Consenting Defendants shall implement the
15 plan.

16 2. Prepumping Excavation and Utility Plan. Based on the
17 results of the soil sampling and analysis programs, the
18 Consenting Defendants shall develop an excavation and utility
19 plan to be implemented prior to the commencement of groundwater
20 pumping which satisfies the requirements of
21 subparagraphs IV.A.2.a. through d. below. The plan shall include
22 a schedule and the proposed disposal or treatment facilities, and
23 shall be implemented according to the schedule in the plan
24 approved by the Governments.

25 a. Containerized Wastes--Buried containerized wastes
26 located within Area I shall be exhumed. If the contents of an

1 exhumed container are RCRA hazardous wastes, or dangerous wastes
2 or extremely hazardous waste as defined by State of Washington
3 regulation, the exhumed containerized wastes shall be properly
4 packaged and transported to a Government-approved off-site
5 facility. If the containerized contents are none of the above,
6 the contents may be placed in Area I; however, no exhumed liquids
7 may be placed in Area I unless solidified or stabilized. The
8 empty containers shall be disposed in a Government-approved
9 off-site facility or recycled. If the Consenting Defendants
10 demonstrate to the Governments' satisfaction that particular
11 tanks or other buried containers cannot practicably be excavated,
12 the excavation plan shall provide for the pumping out, cleaning,
13 and permanent filling of such tanks or containers.

14 b. Specific Waste--The Consenting Defendants shall
15 excavate ten thousand (10,000) cubic yards of specific waste, or
16 such lesser volume as the Governments in their nonreviewable
17 discretion may approve. The Consenting Defendants shall dispose
18 of the specific waste in a Government-approved off-site facility
19 subject to Paragraph XI of the Consent Decree. In the event of a
20 disagreement between the Consenting Defendants and the
21 Governments as to which specific waste material shall constitute
22 the ten thousand (10,000) cubic yards (or less) of materials to
23 be excavated, the dispute resolution procedures of Paragraph XXII
24 of the Consent Decree shall apply.

25 c. PCBs--All presently known materials containing
26 polychlorinated biphenyls (PCBs) with concentrations over 50

1 mg/kg shall be excavated and disposed in a Government-approved
2 off-site facility. Any additional material with PCB
3 concentrations over 50 mg/kg discovered during the sampling and
4 analysis program shall be removed as part of the ten thousand
5 (10,000) cubic yards (or less) of specific waste materials that
6 shall be excavated.

7 d. Utilities--All buried utilities and process lines
8 shall be excavated or plugged intermittently throughout such
9 lines and related bedding materials shall be excavated or
10 incorporated into a stabilized soil mass. Utilities, process
11 lines and related bedding materials that are excavated may be
12 placed under the clean surface on Area I. The utilities include,
13 but are not limited to, septic, storm drainage, water, sanitary
14 sewer and process lines. Notwithstanding the above, the
15 Consenting Defendants shall excavate the septic line and related
16 bedding materials running west from the septic tank through
17 Area V as well as any other buried utilities or process lines
18 running from Area I to or towards Mill Creek through Area V and
19 shall dispose of the same at a Government-approved off-site
20 facility.

21 3. Additional Excavation During and Post-Pumping. During
22 the pumping and post-pumping period, the Governments may require
23 the Consenting Defendants to remove contaminated,
24 non-containerized soil and non-soil materials in addition to the
25 ten thousand (10,000) cubic yards (or less pursuant to
26 subparagraph IV.A.2.b.) of specific waste removed during

1 prepumping excavation if such materials: (1) may not be
2 cost-effectively removed by in-situ leaching and could by their
3 presence prevent compliance with the Mill Creek water quality
4 performance standards after the pumping program is terminated, or
5 (2) may adversely affect the stability of any cap placed over
6 Area I.

7 4. Filling and Grading. For every Area I excavation plan,
8 the Consenting Defendants shall prepare and submit a filling and
9 grading plan. Until a cap has been placed on Area I, it shall be
10 graded so there will be no stormwater runoff from Area I.
11 Pursuant to the provisions of this Scope of Work, the materials
12 excavated from the other areas of the Site may be brought onto
13 Area I and used as fill. Any fill materials which do not come
14 from other areas of the Site shall be clean materials. The
15 surface of Area I shall then be covered with six (6) inches of
16 clean gravel to provide a clean surface. All contaminated fill
17 must be placed below the clean surface.

18 5. Cap. Following dismantling of the groundwater pumping
19 system, Area I may be regraded. The dismantling of the
20 groundwater pumping system shall include the proper abandonment
21 of all wells which are not necessary for monitoring. Area I
22 shall then be covered with a cap. The cap shall be consistent
23 with the criteria in the RCRA regulations for closure of a land
24 disposal facility (landfill) set forth in 40 C.F.R. § 264.310 as
25 in effect at the time of entry of the Consent Decree. In
26 determining whether the proposed cap conforms with these

1 requirements, the Governments will consider the design guidance
2 documents issued pursuant to the regulations.

3 6. Maintenance of the Cap. At the time of cap
4 construction, the Consenting Defendants shall provide for
5 maintenance of the integrity and effectiveness of the cap in
6 compliance with 40 C.F.R. § 264.310 for a period of thirty
7 (30) years. The term of cap maintenance may be modified as
8 provided in 40 C.F.R. § 264.117.

9 B. Off-Property Soils

10 1. Soil Sampling and Analysis Program. The Consenting
11 Defendants shall develop and, after the Governments' approval,
12 implement a soil sampling and analysis plan for off-property
13 soils that will examine all areas which may have been
14 contaminated by releases from or by the activities of Western
15 Processing. The soil sampling and analysis program shall be
16 designed to determine the extent of surface and subsurface
17 contamination above background and the location and extent of hot
18 spots. A hot spot is any soil or other material with any one
19 chemical exceeding the Acceptable Daily Intake (ADI), or with an
20 excess cumulative cancer risk of 1×10^{-5} , or a PCB
21 concentration above 2 mg/kg. The ADI and the excess cumulative
22 cancer risk shall be calculated using the approach utilized in
23 Chapter 4 of the Western Processing Feasibility Study.
24 Background concentrations shall be as described in the
25 Feasibility Study, except for Area X, where a separate background
26 may be established by additional sampling along the railroad

1 right-of-way. The Consenting Defendants shall also determine the
2 location of all abandoned and active utilities, process lines or
3 other pipes leaving Area I and crossing into or ending in the
4 off-property areas. The non-destructive subsurface geophysical
5 survey technique required for Area I may be used in the
6 off-property areas.

7 2. Off-Property Contamination Nexus to Western
8 Processing. Based on the results of the soil sampling and
9 analysis program and other information, the Governments shall
10 determine the locations and extent of all hot spots and all areas
11 of surficial contamination above background levels, as set forth
12 in Chapter 3 of the Western Processing Feasibility Study, which
13 may have been caused by releases from Area I or by the activities
14 of Western Processing. The criteria for establishing this nexus
15 between Area I or Western Processing activities and off-property
16 contamination are that the off-property Contaminants are those
17 which are found on Area I or are a breakdown product of
18 Contaminants which are found in Area I and, either:

19 a. The location and pattern of the off-property
20 Contaminants are consistent with:

21 (i) the Contaminants' migration characteristics and
22 possible migration routes from Area I, or

23 (ii) contamination along South 196th Street from trucks
24 making deliveries to Area I; or
25
26

1 b. A chemical unique to or peculiar to Area I or Western
2 Processing activities, such as oxazolidone, has been found in the
3 same immediate proximity as the off-property contamination.

4 The Consenting Defendants may rebut the Governments' nexus
5 determination by establishing that there is a more probable
6 source for the contamination than Area I or activities of Western
7 Processing. To establish a more probable source, the Consenting
8 Defendants shall use the criteria set forth in
9 subparagraph IV.B.2.a. above as applied to the other source. If
10 a dispute arises between the Governments and the Consenting
11 Defendants regarding the nexus determination, the dispute shall
12 be subject to the dispute resolution procedures of Paragraph XXII
13 of the Consent Decree. Notwithstanding the above, the Consenting
14 Defendants shall be responsible for the Work related to
15 off-property contamination that is not divisible from
16 contamination for which a nexus to Western Processing has
17 otherwise been established. In addition, the Consenting
18 Defendants shall, without delay, conduct the remedial Work on any
19 disputed area whether or not the dispute has been resolved. If,
20 upon resolution of the dispute, the Consenting Defendants
21 prevail, the Governments shall credit the Consenting Defendants
22 pursuant to subparagraph VI.A.2 of the Consent Decree for the
23 cost of the disputed remedial Work conducted. The Consenting
24 Defendants shall maintain separate, well-documented records of
25 costs incurred for all remedial Work in dispute.

26

1 3. Excavation Plan. Based on the results of the soil
2 sampling and analysis program and the nexus determination, the
3 Consenting Defendants shall develop an excavation plan which
4 shall result in the excavation and removal from the off-property
5 areas of all hot spots. In addition, the Consenting Defendants'
6 excavation plan shall include Work in the off-property areas for
7 all utilities and process lines consistent with the requirements
8 of subparagraph IV.A.2.d. above. The excavation plan shall also
9 include a disposal plan and proposed disposal facilities. Any
10 excavated material which is an extremely hazardous waste as
11 defined by State of Washington regulation must be disposed in a
12 Government-approved off-site facility. The excavation plan may
13 provide for the disposal of excavated material which is not an
14 extremely hazardous waste on Area I. Any excavated material
15 brought onto Area I must be placed under the clean surface
16 described in subparagraph IV.A.4. The excavation plan shall also
17 include the filling of any excavated area with clean material.
18 With respect to PCBs, the Consenting Defendants may petition the
19 Governments for approval of an alternative remedial action that
20 is as environmentally protective and more cost effective than
21 removal.

22 4. Excavation. After the Governments' approval of the
23 excavation plan, the Consenting Defendants shall implement the
24 plan according to the approved schedule.

25 5. Off-Property Remedial Work. The Consenting Defendants
26 may do the following described Work upon Government approval of

1 the completion of the sampling part of the sampling and analysis
2 program required by Paragraph IV.B.1, above. By doing the
3 following Work, the Consenting Defendants are not, in any way,
4 relieved from compliance with subparagraphs IV.B.1. through
5 IV.B.4. above. The Consenting Defendants cannot use the Work
6 described below or any costs related thereto as a basis for
7 modification of this Scope of Work due to inconsistency with
8 CERCLA or the NCP.

9 a. In Area II (as shown in Figure 2) the Consenting
10 Defendants may remove soil in a one hundred fifty (150) foot
11 section at the southern end and in a one hundred fifty (150) foot
12 section at the northern end to the base of the Olympic pipeline,
13 i.e., about four (4) feet in depth;

14 b. In Area VIII, the Consenting Defendants may remove
15 one foot of soil from a fifty (50) foot long portion of the
16 depression indicated by solid black in Figure 3.

17 c. Within the portion of Area IX where the ground
18 surface elevation is less than plus twenty (+20) feet, as shown
19 on Figure 2, soil may be excavated to a depth of four (4) feet or
20 to the water table, whichever is less. This includes a part of
21 Area IX within which the Olympic pipeline is located; and

22 d. In Area X, the depth and areal extent of the
23 sediments in the East Drain may be determined in the field by a
24 qualified engineer or geologist. These sediments may be removed
25 and placed in Area I.

1 6. Cover Plan. Based on the results of the soil sampling
2 and analysis program and the nexus determination, the Consenting
3 Defendants shall develop a plan to cover all areas with surface
4 soil contamination above background. The permeability of the
5 cover shall be less than or equal to the permeability of the
6 subsoil. The cover shall be one (1) foot of compacted clean soil
7 or an equally protective layer of asphalt. The cover plan shall
8 be submitted at the same time as the off-property excavation
9 plan. After the Governments' approval of the cover plan, the
10 Consenting Defendants shall implement the plan according to the
11 approved schedule.

12 7. Maintenance of the Cover. At the time of cover
13 construction, the Consenting Defendants must provide for
14 maintenance of the integrity and effectiveness of the cover for a
15 period of thirty (30) years. Maintenance shall include repairs
16 as necessary to correct for the effects of settling, subsidence,
17 erosion, and other events, and prevent run-on and run-off from
18 eroding or otherwise damaging the cover. Upon petition of the
19 Consenting Defendants, the Governments may eliminate or modify
20 the maintenance requirements for specific off-property areas.

21 C. Other Off-Property Actions for Direct Contact Hazards

22 1. House in Area VIII. The Consenting Defendants shall
23 vacuum or otherwise remove particulate contamination from the
24 house in Area VIII.

25 2. Utility Testing Program. Any portion of the existing
26 buried "live" utility lines that may be entered or disturbed by

1 utility employees during their regular operation and maintenance
2 activities (e.g., manholes, vaults) shall be inspected by the
3 Consenting Defendants for Contaminants which may have originated
4 from the Site or activities of Western Processing. Remedial
5 actions, such as vacuuming, steam cleaning, swabbing or sediment
6 removal, shall be taken if the Governments determine that such
7 actions are necessary, and the appropriate utility consents to
8 such remedial action. At a minimum, the manholes nearest to the
9 Site on South 196th Street and 72nd Avenue South shall be tested
10 and if necessary decontaminated within one (1) year of entry of
11 the Consent Decree.

12 D. Mill Creek, East Drain, and Groundwater

13 1. Groundwater Extraction System Performance Standards.

14 The Consenting Defendants shall, following Governmental approval
15 of a groundwater extraction, pumping, and treatment plan, install
16 and operate a groundwater extraction system which shall achieve
17 within three (3) years of the date of entry of this Consent
18 Decree the performance standards required in
19 subparagraphs IV.C.1.a., b., and c. below:

20 a. During and after the period of pumping, achieve
21 the Mill Creek performance standards set forth in
22 Paragraph IV.D.4 below; and

23 b. During the period of pumping, achieve a shallow
24 groundwater flow inward from the boundaries of the area depicted
25 in Figure 3; and
26

1 c. During the period of pumping, either (1) provide
2 for a reversal of groundwater flow at a depth of forty (40) to
3 seventy (70) feet at the western boundary of the cross hatched
4 area depicted in Figure 3, or (2) establish an hydraulic barrier
5 to the regional groundwater flow at the forty (40) to seventy
6 (70) foot depth at approximately the western boundary of the
7 cross hatched area depicted in Figure 3 through the use of
8 extraction wells. The Consenting Defendants shall place and
9 operate such hydraulic barrier extraction wells in some
10 combination of Areas I, V, VI, and VII, and in either Area VIII
11 or IX. Wells established to extract the plume of
12 trans 1,2-dichloroethylene pursuant to subparagraph IV.D.2. may
13 be used as part of the hydraulic barrier system so long as they
14 meet the other requirements of this paragraph. These wells shall
15 be pumped at a rate sufficient to provide overlapping zones of
16 influence between the hydraulic barrier wells.

17 Water pumped from wells located in Areas V, VI, VII, VIII,
18 and IX may be infiltrated into Area I to assist the leaching
19 process. Any water pumped from wells in Areas V, VI, VII, VIII,
20 and IX that will impede rather than assist the leaching process
21 may not be infiltrated. Groundwater extracted from Area I and
22 any other highly contaminated extracted groundwater which does
23 not meet the discharge requirements of the Municipality of
24 Metropolitan Seattle (METRO) shall be piped to either an on-site
25 treatment plant or to an existing treatment plant located near
26 the Site. All extracted water leaving the Site shall comply with

1 the requirements of METRO if discharged into the sewer system or
2 of Ecology pursuant to the National Pollutant Discharge
3 Eliminations System (NPDES) if discharged into waters of the
4 United States.

5 2. Trans 1,2-dichloroethylene Performance Standard. The
6 plume of trans 1,2-dichloroethylene that has been detected in
7 wells 21, DW-34S, 84-4, MW-35, MW-47, and MW-50 and any
8 subsequent wells in the same plume shall be reduced such that
9 concentrations of trans 1,2-dichloroethylene shall be at or below
10 seventy (70) micrograms per liter no later than the termination
11 of operation of the groundwater extraction system required by
12 subparagraph IV.D.1. and shall continue to be met thereafter.
13 This performance standard shall be accomplished by:

14 a. locating and removing Contaminants from Area I
15 during specific waste removal; and

16 b. installing and operating within three (3) years of
17 the date of entry of this Consent Decree, trans 1,2-dichloro-
18 ethylene extraction wells to reduce the concentration of
19 trans 1,2-dichloroethylene Contaminants in the groundwater which
20 is already beyond Area I.

21 3. Compliance Period. The Work at the Site will not be
22 considered complete until the performance standards have been
23 achieved for thirty (30) years from the termination of pumping.
24 Upon petition by the Consenting Defendants with information that
25 includes, among other things, evidence sufficient to demonstrate
26 that a shorter compliance period is protective of human health

1 and the environment, the Governments may reduce the compliance
2 period. Disputes between the Governments and the Consenting
3 Defendants regarding the compliance period shall be subject to
4 the dispute resolution procedures of Paragraph XXII of the
5 Consent Decree.

6 4. Allowable Concentrations in Mill Creek.

7 a. If the concentration of a Mill Creek indicator
8 chemical (as listed in Table 1) or other priority pollutant at
9 the upstream (background) monitoring point in Mill Creek is less
10 than two-thirds of the applicable upstream Federal Ambient Water
11 Quality Criterion for Aquatic Organisms (Water Quality
12 Criterion),^{2/} the maximum allowable concentration at the
13 downstream compliance point^{3/} shall be the downstream Water
14 Quality Criterion.^{4/}

15 b. If a Water Quality Criterion is not achievable
16 because the upstream (background) concentration of a chemical is
17 near or above the Water Quality Criterion, the maximum allowable
18 concentration at the downstream compliance point shall be the
19 level described below:

20 _____
21 ^{2/} The applicable Water Quality Criteria shall be those final
22 criteria published in the Federal Register as of the date of
entry of this Consent Decree.

23 ^{3/} The upstream monitoring point and the downstream
24 compliance point are those described in subparagraph IV.D.7.b.
below.

25 ^{4/} Designation of upstream and downstream is necessary
26 because the applicable Water Quality Criterion varies depending
on the hardness of the water.

1 (i) If the concentration of a Mill Creek
2 indicator chemical or other priority pollutant at the upstream
3 (background) monitoring point in Mill Creek is at or above
4 two-thirds of the upstream Water Quality Criterion but less than
5 the upstream Water Quality Criterion, the maximum allowable
6 concentration at the downstream compliance point shall be no more
7 than the background concentration plus fifty (50) percent of the
8 background concentration; or

9 (ii) If the concentration of a Mill Creek
10 indicator chemical or other priority pollutant at the upstream
11 (background) monitoring point in Mill Creek is at or above the
12 upstream Water Quality Criterion, the maximum allowable
13 concentration at the downstream compliance point shall be no
14 greater than background plus eighty (80) percent of the upstream
15 Water Quality Criterion.

16 c. Meeting the above performance standards shall not
17 require responsibility for any contaminated water entering Mill
18 Creek between the upstream monitoring and downstream compliance
19 points that is contaminated by a source other than the Site or
20 Western Processing activities. Upon demonstration by the
21 Consenting Defendants that water contaminated by a source other
22 than the Site or Western Processing activities is entering Mill
23 Creek between the upstream monitoring and downstream compliance
24 points and quantification of such contamination by the Consenting
25 Defendants, an appropriate adjustment will be made by the

26

1 Governments for the Contaminants attributable to such other
2 source.

3 5. Annual Evaluation. The Consenting Defendants shall
4 perform and submit in writing for the Governments' approval an
5 annual evaluation of the effectiveness and possible and proposed
6 modifications of the groundwater extraction, pumping, and
7 treatment program.

8 6. Termination of Pumping.

9 a. The Consenting Defendants shall operate the
10 groundwater extraction and treatment system required by
11 subparagraph IV.D.1. for a minimum of seven (7) years, provided,
12 however, the Consenting Defendants, after five (5) years of
13 pumping, may petition the Governments for a reduction of the
14 minimum pumping time. The Consenting Defendants shall apply to
15 the Governments prior to ceasing groundwater extraction, pumping,
16 and treatment. The petition, or an application following the
17 minimum pumping period, shall include sufficient information to
18 demonstrate that the Mill Creek performance standards as provided
19 in subparagraphs IV.D.1. and 4. above shall be met on a permanent
20 basis following cessation of the pumping. In determining whether
21 pumping may cease, the Governments will consider, among other
22 things, the percentage reduction in the initial concentrations of
23 available (mobile) zinc and cadmium as measured in the influent
24 to the treatment plant.

25 b. The Consenting Defendants shall apply to the
26 Governments prior to ceasing operation of the groundwater

1 extraction, pumping, and treatment system installed for the
2 trans 1,2-dichloroethylene plume. This application shall include
3 sufficient information to demonstrate that the provisions of
4 Paragraph IV.D.2. shall be met on a permanent basis.

5 c. The Consenting Defendants may request approval
6 from the Governments to use treatments in addition to the actions
7 required by this Scope of Work including, without limitation,
8 in-situ soil stabilization or acid leaching and base fixation, to
9 shorten the time in which the necessary Contaminant reduction is
10 achieved.

11 7. Monitoring Programs. The groundwater monitoring plan
12 and the Mill Creek/East Drain monitoring plan shall be submitted
13 as part of the groundwater extraction, pumping, and treatment
14 plan.

15 a. Groundwater Monitoring Program--The groundwater
16 monitoring program shall include no more than twelve (12) new
17 well clusters defining both the areal and vertical extent of the
18 shallow and deeper contaminated groundwater zones. Of these well
19 clusters, two (2) shall be up-gradient of the contamination. In
20 addition to these twelve (12) well clusters, another five (5) new
21 or existing shallow wells and three (3) new or existing well
22 clusters shall be within the contaminated groundwater zone. All
23 well clusters shall include wells adequately screened within the
24 10 to 30-foot level, 40 to 60-foot level, and 80 to 100-foot
25 level below the ground surface. At least four (4) well clusters,
26 one of which is up-gradient of the Site, shall include an

1 additional well adequately screened within the 120 to 140-foot
2 level below the ground surface. The shallow wells within the
3 contaminated groundwater zone shall be adequately screened within
4 the 10 to 30-foot level below the ground surface. All well heads
5 shall be located both horizontally and vertically. The plan for
6 these wells shall provide for the sampling and analysis of soil
7 samples during well construction. Monitoring shall be conducted
8 for well water levels, all priority pollutants, and for at least
9 the following parameters: total hardness, iron, manganese,
10 temperature (field), pH (field), total chlorides, specific
11 conductance (field), sulfates, sodium, calcium, bicarbonates,
12 carbonates, and oxazolidone. Groundwater monitoring shall be
13 conducted at least quarterly for the indicator chemicals set
14 forth in Table 2 and the conventional parameters listed above. A
15 complete priority pollutant scan shall be conducted annually in
16 all monitoring wells. Well water level measurements shall be
17 taken monthly. The Governments may reduce the frequency of well
18 water level measurements after the groundwater extraction system
19 has been operating in compliance with performance standards for
20 at least two (2) years. Groundwater level monitoring wells shall
21 be appropriately located within the contaminated zone to
22 adequately verify that the inward gradients and hydraulic barrier
23 (or flow gradient reversal) are or is being maintained.

24 b. Mill Creek and East Drain Monitoring Program--The
25 Mill Creek and East Drain monitoring program shall include
26 sampling and analysis of both sediments and water and

1 measurements of stream flow. At a minimum, the Consenting
2 Defendants shall monitor Mill Creek water and sediment at three
3 locations: approximately one hundred (100) feet upstream of the
4 intersection of a forty-five (45) degree line drawn northwest
5 from the southwest corner of Area I to Mill Creek which shall be
6 the upstream background monitoring point; the S. 196th Street
7 bridge; and approximately four hundred (400) feet downstream of
8 the S. 196th Street bridge which shall be the downstream
9 compliance point. If shallow groundwater contaminated by the
10 Site or activities of Western Processing is detected north of the
11 downstream compliance point, additional compliance points shall
12 be added downstream to encompass all contaminated groundwater
13 which may be discharging to Mill Creek; provided, however,
14 additional compliance points shall not be added if the Consenting
15 Defendants demonstrate that shallow groundwater north of the
16 downstream compliance point is contaminated solely by a source
17 other than Western Processing. Mill Creek sediment shall also be
18 monitored downstream of the discharge from the East Drain. East
19 Drain water and sediment shall be sampled at a minimum of two
20 locations: due east of the southern boundary of Area I; and on
21 the East Drain just upstream of its discharge into Mill Creek.
22 During pumping, water samples shall be taken monthly at all
23 sampling locations. If after five (5) years of pumping the Mill
24 Creek performance standards have been continuously met, the
25 frequency of sampling may be reduced to quarterly until
26 termination of pumping. Following cessation of pumping, monthly

1 sampling shall resume. Sediment samples shall be taken at least
2 semi-annually. Water samples shall be analyzed monthly for
3 cadmium, zinc, turbidity, pH (field), temperature (field),
4 conductivity (field), dissolved oxygen (field), suspended solids,
5 nitrate, ammonia, phosphorous, and hardness. Water samples shall
6 be analyzed at least quarterly for all Mill Creek/East Drain
7 Indicator Chemicals (Table 1). At least annually water samples
8 shall also be analyzed for priority pollutants. Each priority
9 pollutant metal shall be analyzed for total concentration,
10 dissolved concentration, and in accordance with the methodology
11 applicable to the Water Quality Criteria. Sediment samples shall
12 be analyzed for all priority pollutants.

13 c. Quarterly Reports--In addition to promptly
14 providing to the Governments all quality assured data, the
15 Consenting Defendants shall provide a quarterly interpretive
16 report discussing the quantitative results of the sampling and
17 any trends, unusual occurrences, laboratory errors, or other
18 relevant information. Analytical discrepancies may be corrected
19 as appropriate upon approval of the Governments without
20 automatically triggering a conditionally required action. The
21 Consenting Defendants shall monitor, or shall provide for the
22 monitoring of, the groundwater and the Mill Creek and the East
23 Drain water and sediments, for the entire compliance period.

24 8. Mill Creek and East Drain Excavation. After the
25 groundwater pumping system has been meeting the performance
26 standards contained in Paragraph IV.D.1 above for two (2) years,

1 and upon demonstration by the Consenting Defendants that
2 significant additional sediment recontamination will not occur as
3 a result of contamination from the Site, the Consenting
4 Defendants shall submit a plan for sampling and analyzing the
5 condition of the sediments in Mill Creek and the East Drain which
6 may have been affected by the Site or activities of Western
7 Processing. The area to be sampled shall include the reach of
8 Mill Creek between the upstream background monitoring point to a
9 point three hundred (300) feet downstream of the East Drain
10 discharge into Mill Creek. After the plan has been approved by
11 the Governments, the sampling and analysis shall be implemented
12 by the Consenting Defendants according to the approved schedule
13 in the plan. Within six months of approval of the Mill Creek
14 sampling and analysis plan, the Consenting Defendants shall
15 submit a plan for excavating the Mill Creek and the East Drain
16 sediments in the area of sampling which contain leachable or
17 bio-available pollutants which may affect adversely aquatic
18 organisms and which may have originated at the Site. This plan
19 will include provisions for restoration to their pre-excavation
20 condition of any areas of Mill Creek excavated pursuant to the
21 Scope of Work. Such restoration shall include revegetation of
22 the stream bank. Following the Governments' approval, the
23 excavation and restoration shall be implemented by the Consenting
24 Defendants according to the approved schedule and plan. The plan
25 shall include disposal of the excavated material in an approved
26 off-site facility.

1 E. Conditionally Required Actions

2 1. If the Consenting Defendants fail to comply with any
3 performance standard provided herein, then the Consenting
4 Defendants shall submit a study to the Governments within
5 three (3) months of such noncompliance. The study shall
6 determine the nature, extent, and probable cause of
7 noncompliance, and remedial action alternatives, schedules, and
8 cost estimates to remedy the noncompliance. The Consenting
9 Defendants shall indicate their preferred remedial action
10 alternative. After the Governments' approval of the study and
11 the Governments' selection of a cost effective remedial action
12 which is consistent with the NCP, the Consenting Defendants shall
13 implement the selected remedial action.

14 2. If after ten (10) years of groundwater extraction
15 pumping and treatment, modeling or other information indicate
16 that it is likely that more than ten (10) years of additional
17 groundwater extraction will be necessary to meet the performance
18 standards, the Consenting Defendants shall submit a plan to the
19 Governments presenting alternative methods for achieving the
20 performance standards, and indicating the Consenting Defendants'
21 preferred alternative. After the Governments' selection of an
22 alternative action which complies with the NCP, the Consenting
23 Defendants shall implement the selected remedial action.

24 3. If the Governments disapprove of the study, plan, or
25 the preferred alternative submitted pursuant to either
26 subparagraph IV.E.1. or 2. above, they shall state the reasons

1 for their decision and any perceived deficiencies in the proposed
2 study, plan, or preferred alternative. The Consenting Defendants
3 shall have thirty (30) days after the Governments' decision to
4 modify the study, plan, or preferred alternative or provide
5 additional supporting justification of the Consenting Defendants'
6 study, plan, or original preferred alternative. The additional
7 thirty (30) days in which the Consenting Defendants have to
8 respond shall not extend any other schedule called for in this
9 Consent Decree.

10
11 V

12 SCHEDULE

13 A detailed Work plan and schedule shall be submitted by the
14 Consenting Defendants no later than four (4) months from entry of
15 the Consent Decree. Upon the Governments approval of the
16 detailed Work plan and schedule, the schedule shall be submitted
17 to the Court and shall become a part of this Consent Decree.
18 This detailed Work plan shall include a schedule for submittal of
19 at least the following elements:

20 A. Schedule of Plans--The schedule for submission of plans
21 includes:

22 Area I soils - Geophysical survey plan

23 Area I soils - Sampling plan

24 Area I soils - Excavation plan

25 Area I soils - Filling and grading plan

26 Off-property soils - Sampling plan

- 1 Off-Property soils - Excavation plan, and
2 cover plan
3 Groundwater extraction and treatment plan -
4 Shallow Groundwater Extraction system
5 Hydraulic barrier extraction system
6 (or gradient reversal system)
7 Trans 1,2-dichloroethylene extraction system
8 Groundwater and Mill Creek/East Drain
9 monitoring plans
10 B. Schedule for initiation of Work
11 C. Schedule for completion of Work
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TABLE 1

MILL CREEK/EAST DRAIN INDICATOR CHEMICALS

Volatile Organics

Metals

Chloroform
1,1-Dichloroethane
1,1-Dichloroethene
Ethylbenzene
Methylene Chloride
Tetrachloroethene
Trans-1,2-dichloroethene
1,1,1-Trichloroethane
Trichloroethene
Toluene

Cadium
Chromium
Copper
Nickel
Lead
Zinc

Base Neutral/Acid Extractables

Other

Bis (2-ethylhexyl) phthalate
2,4-Dichlorophenol
2,4-Dimethylphenol
Isopherone
Phenol

Cyanide
Oxazolidone

TABLE 2

GROUNDWATER INDICATOR CHEMICALS

Volatile Organics

All Volatile Organic Priority Pollutants (See 40 C.F.R.
§ 264.122)

Metals

Cadium
Chromium
Copper
Nickel
Lead
Zinc

Base Neutral/Acid Extractables

Bis (2-ethylhexyl) phthalate
2,4-Dichlorophenol
2,4-Dimethylphenol
Isopherone
Phenol

Other

Oxazolidone
Cyanide

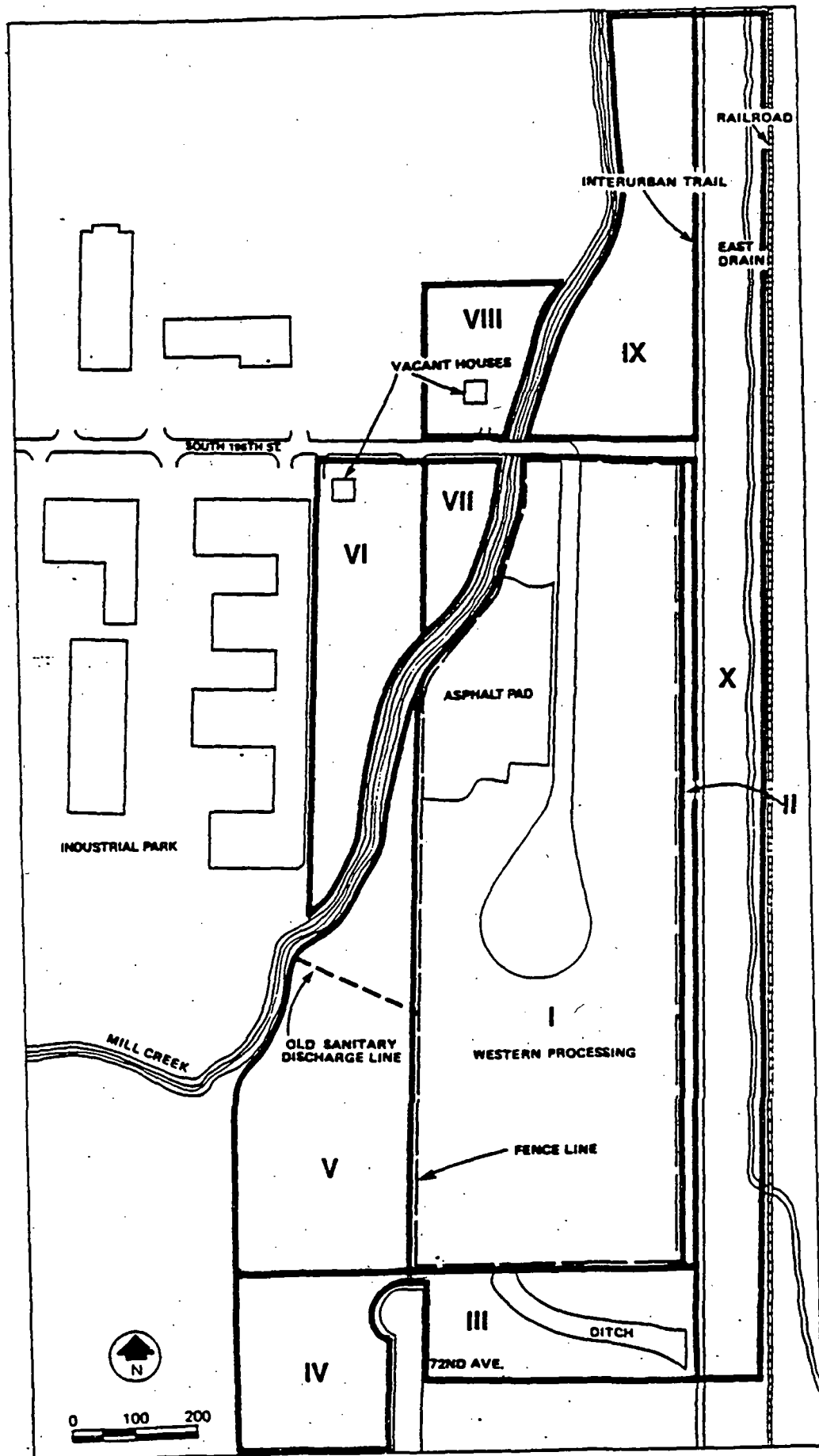
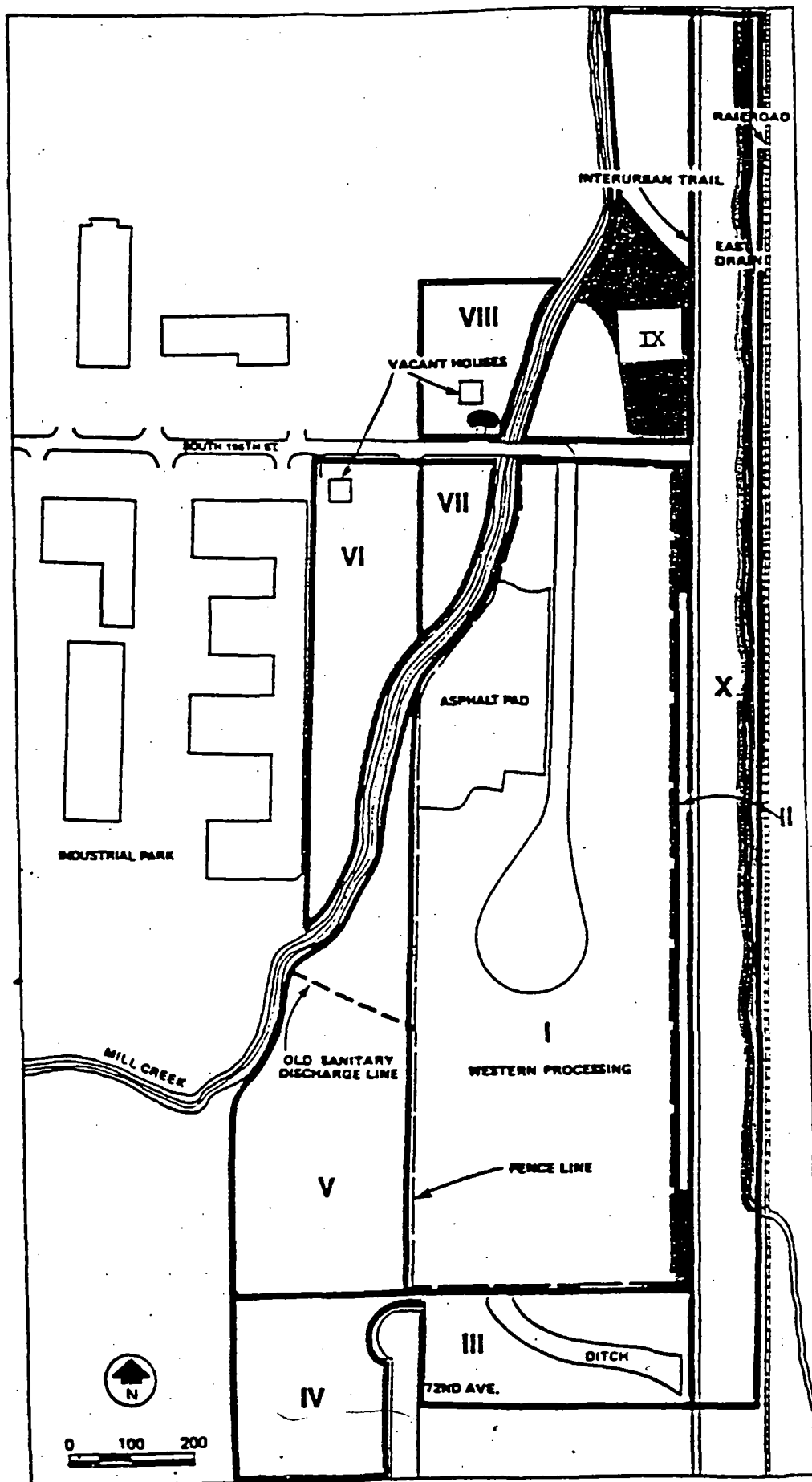


FIGURE 1



OFF PROPERTY REMEDIAL ACTION

AREAS II, VIII, IX, X

Figure 2

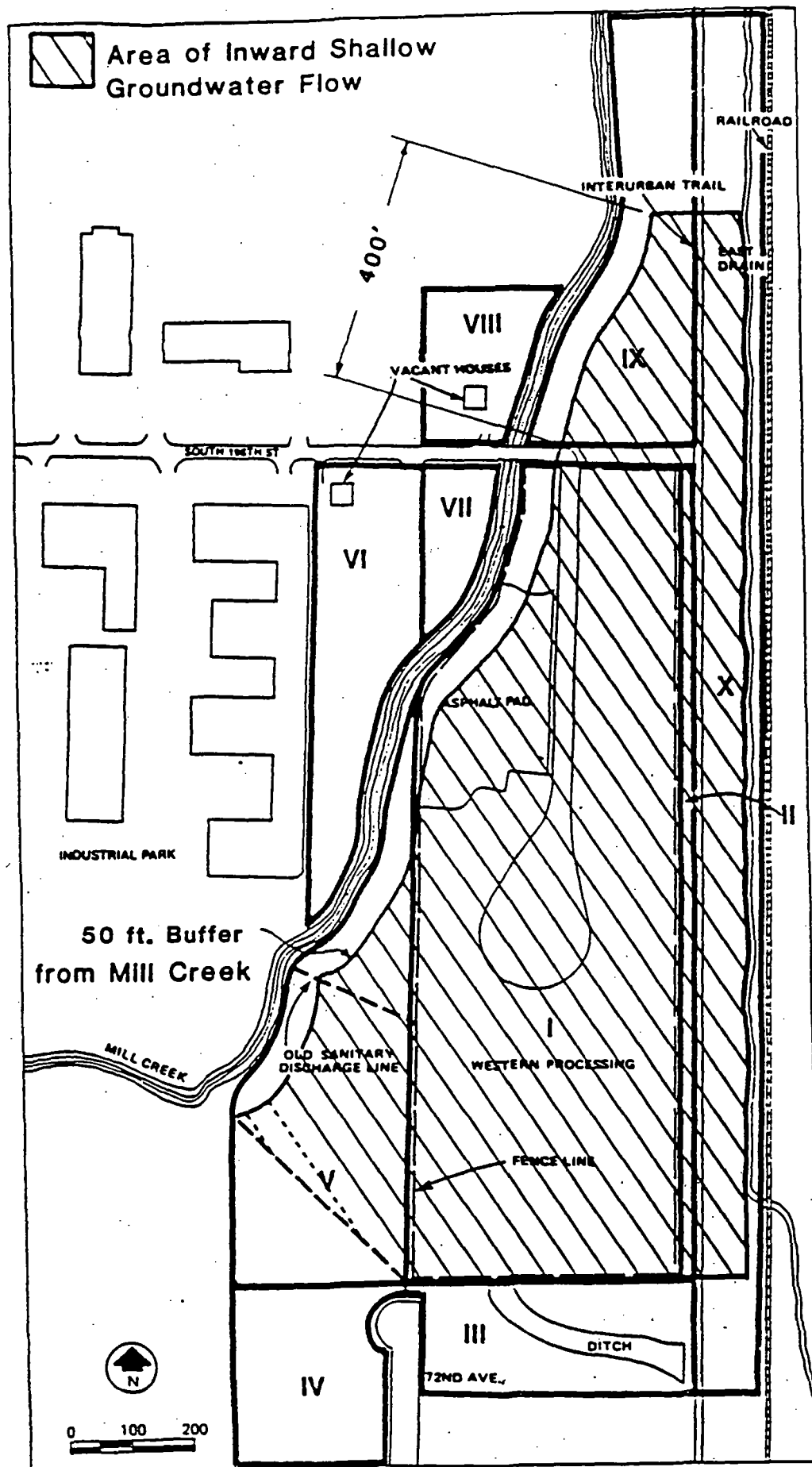


FIGURE 3